

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CAUSE NO. 17-md-2804
MDL NO. 2804

IN RE: NATIONAL)
PRESCRIPTION OPIATE)
LITIGATION)
THIS DOCUMENT RELATES TO:)
TRACK THREE CASES)

REMOTE VIDEO DEPOSITION OF
CARMEN A. CATIZONE, MS, RPh, DPh
VOLUME I

The deposition upon oral examination of
CARMEN A. CATIZONE, MS, RPh, DPh, a witness produced
and sworn before me, Amy Doman, Registered Merit
Reporter, Certified Realtime Reporter, Certified
Shorthand Reporter, Notary Public in and for the County
of Hamilton, State of Indiana, taken on behalf of the
Defendants, in Mount Pleasant, South Carolina,
scheduled to begin at 8:10 A.M., on Tuesday,
June 15, 2021, pursuant to the Federal Rules of Civil
Procedure.

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1 THE VIDEOGRAPHER: We are on the record. Today is
2 June 15th, 2021. This is the video deposition of
3 Carmen Catizone being taken In Re: National
4 Prescription Opiate Litigation. This case is
5 pending in the United States District Court for the
6 Northern District of Ohio. The case number is
7 17-md-2804. I am Rob Miller, and the court
8 reporter is Amy Doman.

9 You may now swear in the witnesses.

10 THE REPORTER: Good morning, Counselors. My
11 name is Amy Doman. I'm a licensed Certified
12 Shorthand Reporter working in association with
13 Veritext Legal Solutions. I will not be in the
14 same room with the witness. Instead, I will swear
15 the witness and will stenographically record the
16 deposition remotely via Zoom.

17 Do all parties stipulate to the validity of
18 the remote swearing as if it had been conducted
19 following Rule 30 of the Federal Rules of Civil
20 Procedure and the state's rules where this action
21 is pending?

22 MR. ELSNER: Yes.
23
24
25

1 CARMEN A. CATIZONE, MS, RPh, DPh,
2 having been duly sworn to tell the truth, the whole
3 truth, and nothing but the truth relating to said
4 matter, was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 QUESTIONS BY TARA FUMERTON:

8 Q Good morning, sir. Can you please state your name
9 for the record.

10 A Good morning. Carmen Catizone, C-a-t-i-z-o-n-e.

11 Q My name is Tara Fumerton, and I'm one of the
12 attorneys that represents Walmart in this
13 litigation, and I'm going to begin asking you
14 questions today. Some of the other co-defendants
15 in this case have counsel who will be asking
16 questions to you today as well. But I get the
17 pleasure of starting off with you.

18 Sir, what do you prefer to be called?

19 A Call me Carmen.

20 Q If we were going a little bit more formal -- I
21 appreciate that -- would you prefer to be called,
22 Mr. Catizone? Dr. Catizone?

23 A Mr. Catizone is fine.

24 Q Okay. Where do you live, Mr. Catizone?

25 A I live in Arlington Heights, Illinois.

1 Q And where are you located today for your remote
2 deposition?

3 A I'm in Mount Pleasant, South Carolina.

4 Q And are you in a lawyer's office?

5 A A lawyer's conference room.

6 Q Is anybody else present in the room with you today?

7 A No.

8 Q Is anybody else present at that lawyer's office
9 with you?

10 A There are lawyers across the hall but not
11 physically in the same room or close to me.

12 Q Is -- Plaintiffs' counsel, Mr. Elsner, is in the
13 same building; is that correct?

14 A Correct.

15 Q Are there other Plaintiffs' counsel that are also
16 in that building --

17 A I'm not --

18 Q -- that you're aware of?

19 A I'm not familiar with the building or who is here,
20 so...

21 Q To your knowledge, is there any other Plaintiffs'
22 counsel who you've been working with on this matter
23 at that building?

24 A I saw one of the other attorneys here earlier, but
25 I'm not sure where he is now.

1 Q And who is that?

2 A James Ledlie.

3 Q Do you understand that you're not permitted to
4 communicate with anybody via phone or text while
5 you're giving your testimony today?

6 A Yes.

7 Q And are you in front of a computer?

8 A I'm in front of two screens, no computers here. I
9 think there's just a terminal, a dummy terminal to
10 activate the Zoom.

11 Can you hear me okay? Is that loud enough for
12 you?

13 Q I can hear you just fine. Can you hear me as well?

14 A Yes, thank you.

15 Q If at any point in time you can't or I forget to go
16 off mute, which will happen at some point, please
17 let me know, and I'll do the same.

18 A Thank you.

19 Q Do you understand the oath that you just took?

20 A Yes, I do.

21 Q And do you agree to answer each question I ask
22 today truthfully as to the best of your ability?

23 A Yes.

24 Q Have you been -- do you have any materials with you
25 today?

1 A All I have is my supplemental report, which is
2 Exhibit 1, that you provided me with, a blank pad
3 to write things down, my CV, and a glass of water
4 and a glass -- a cup of coffee.

5 Q On your supplemental report, do you have any notes
6 that you've made on that?

7 A No.

8 Q What about on your CV?

9 A No.

10 Q And the CV that you have with you, is that the
11 first CV that you provided in this case or is it
12 the second?

13 A This was the one that was provided in September of
14 2020, so I don't know if that was the first or
15 second.

16 Q Okay. And who did you provide that to in
17 September of 2020?

18 A To Amanda Unterreiner. She's one of the paralegals
19 at the firm.

20 Q Have you been deposed in the past?

21 A Yes, I have.

22 Q On several occasions, correct?

23 A Yes.

24 Q And you've testified at trials and other legal
25 proceedings as well, correct?

1 A Correct.

2 Q And we'll get into that in some more depth later,
3 but just sort of as a reminder, I know that you've
4 done this several times, our goal here is to get a
5 clear record. I will do my best to wait until you
6 finish your answer before I ask another question.
7 Please give verbal answers. Obviously, the court
8 reporter can't take nods.

9 It might seem like a long time too but a
10 relatively short time for the defendants to ask you
11 questions today, so to the extent that you could
12 answer questions yes or no, I would appreciate you
13 answering questions yes or no. If you don't
14 understand a question I ask, please ask me to
15 rephrase it.

16 Are you represented at this deposition by
17 counsel today?

18 A No.

19 Q Do you have other counsel that represent you in
20 connection with this matter?

21 A No.

22 Q What is your understanding of who Mr. Elsner
23 represents?

24 A Municipalities located in Ohio, Lake, and Trumbull
25 County.

1 Q From time to time, Mr. Elsner might object to
2 questions that I ask, and I will ask you to go
3 ahead and answer the question if you understand it.
4 Please ask to take a break if you need to do so.
5 We will otherwise aim to take breaks periodically.

6 Any questions?

7 A No.

8 Q Is there anything today that would prevent you from
9 testifying fully, completely, and honestly?

10 A No.

11 Q Do you have any health considerations or are you
12 taking any medications that would impede your
13 ability to sit for a deposition today?

14 A No.

15 Q What did you do to prepare for your deposition?

16 A I reviewed a number of materials. I also then
17 looked at the Controlled Substances Act and other
18 regulations and requirements, and then I reviewed
19 depositions that were provided to me.

20 Q Did you review -- let me back up.

21 In connection with your expert report in this
22 matter, you produced an Appendix B that was some
23 materials that you considered, correct?

24 A If you're referring to the reliance list, then yes.

25 Q Okay. And we'll look at that in just a second.

1 But are all of the materials that you reviewed in
2 preparation for your deposition cited in that
3 document?

4 A No.

5 Q What materials did you review that are not cited in
6 that document?

7 A Over the past 35 years, working as the executive
8 director of NABP and pharmacy practice regulation,
9 there's a significant amount of documents and
10 background that I've gathered. So what was
11 included in my report were primary documents and
12 examples of that. The inclusive list of everything
13 that I looked or everything I drew upon based upon
14 my experience would be very exhaustive and wouldn't
15 have been productive.

16 Q I think my question was a little narrower than what
17 you just said, but we're going to get back to that
18 too.

19 In preparation for your deposition --

20 A Oh, I'm sorry.

21 Q -- you specifically mentioned reviewing some
22 materials. I was trying to understand what
23 materials you reviewed in preparation for your
24 deposition.

25 A Just the materials that were on the reliance list.

1 Q Okay.

2 A Sorry about that.

3 Q And you mentioned depositions. Are there
4 particular depositions that you reviewed in
5 preparation for this deposition?

6 A Depositions that were taken by the plaintiffs'
7 counsel.

8 Q And did you review all of the depositions that were
9 in your reliance list in preparation for your
10 deposition, or was it a subset of them?

11 A All the depositions on the reliance list.

12 Q Did you meet with Mr. Elsner or any other attorneys
13 for plaintiff in preparation for your deposition?

14 A Yes.

15 Q How many times?

16 A Probably twice in person and maybe two or three
17 times via virtual or Zoom.

18 Q Who else participated in those meetings besides
19 Mr. Elsner?

20 A The attorney I mentioned earlier, James Ledlie and
21 then Dan Goetz.

22 Q Anybody else?

23 A Amanda, who I mentioned earlier, is a paralegal.

24 Q Anybody else?

25 A No.

1 Q If you had to estimate of those four to five
2 meetings, approximately how long did they last in
3 totality?

4 A Each meeting was probably, on average, two hours,
5 and so a total of four times two, maybe eight to
6 ten hours total.

7 Q Did you meet or speak with any lawyers for the
8 Department of Justice in preparation for this
9 deposition?

10 A No.

11 Q Did you talk to anybody from the Department of
12 Justice about this deposition?

13 A No.

14 Q Did you talk to anybody else other than Mr. Elsner
15 or the individuals that you mentioned about the
16 deposition?

17 A No.

18 Q You mentioned that you reviewed materials that were
19 on your reliance list in preparation for the
20 deposition and that you reviewed all of the
21 depositions that were listed.

22 Did you review all of the materials on your
23 reliance list, or did you review a subset of the
24 other documents that were cited there in
25 preparation for your deposition?

1 A All of the materials.

2 Q And how long did that take you?

3 A Probably a total time, two and a half to three
4 months.

5 Q And so when I asked you what you did to prepare for
6 your deposition, you're essentially including
7 everything you've done to work on this case; is
8 that fair?

9 A Yes, ma'am.

10 Q What about the weeks leading up to the deposition?
11 Are there any other materials that you went back to
12 specifically to prepare?

13 A I'm sorry. The first part of the question cut out
14 a little bit. I'm sorry.

15 Q Sure. I leaned back, which is another thing I'm
16 going to try not to do.

17 In the weeks leading up to the deposition,
18 were there any particular materials that you went
19 back to review in preparation for your deposition?

20 A My CV, a supplemental report, and those were
21 probably the primary documents.

22 Q Was there anything you wanted to do in order to
23 prepare for your deposition that you didn't have
24 the opportunity to do?

25 A No.

1 Q Okay. Before we went on the record, I'd ask you to
2 pull out a number of documents. We're going to
3 mark them for the record if everybody will bear
4 with us for a second. I'll ask you to keep them
5 handy because we're going to be referencing these
6 four documents throughout your deposition.

7 So we've marked as Exhibit 1 your original
8 report that was served in this case.

9 (Exhibit 1 was marked for identification.)

10 Q That was Tab 1 in the documents in the box.

11 We're going to mark as Exhibit 2 your
12 supplemental report.

13 (Exhibit 2 was marked for identification.)

14 Q We're going to mark as Exhibit 3 the redline
15 showing the changes between the report.

16 (Exhibit 3 was marked for identification.)

17 Q We'll mark as Exhibit 4 --

18 A Excuse me. Exhibit 3 is Appendix B. It's not the
19 supplemental report with changes.

20 Q So it might be a little confusing, but at the end
21 of the day, I promise it will be a clearer record.
22 The tab numbers aren't going to necessarily
23 correspond to the exhibit numbers. So what was
24 Tab 3 is going to end up being marked as Exhibit 6.
25 So what we're marking as Exhibit 3 for purposes of

1 the deposition is the redline of your report.

2 MS. FUMETON: And, Mike, unless you have an
3 objection, given that we're putting -- you know, he
4 doesn't see exhibit stickers, I'm okay with him
5 actually writing Exhibit 1, Exhibit 2, Exhibit 3 on
6 the documents if it's easier for him to reference
7 it.

8 MR. ELSNER: That's fine. You can just refer
9 to the track change version of the report you have
10 in front of you as Exhibit 3.

11 BY MS. FUMETON:

12 Q And so Exhibit 4 will be the CV that you provided
13 with your original report, and that was Tab 4 in
14 the envelope?

15 MR. ELSNER: Wait a second. Now I'm confused.
16 Is Exhibit 4 the materials considered list,
17 Appendix B.

18 MS. FUMETON: No, that's Exhibit 6.

19 THE WITNESS: It's Exhibit 3 in the box.

20 MS. FUMETON: Right. So the tabs aren't the
21 exhibit numbers. It's going to be -- we're going
22 to mark for the record what the exhibits are.

23 THE WITNESS: Okay.

24 MS. FUMETON: Are you following?

25 MR. ELSNER: So Exhibit 4 is his original CV.

1 MS. FUMETON: Is Exhibit 4.

2 (Exhibit 4 was marked for identification.)

3 MS. FUMERTON: And these also are being
4 published to Exhibit Share. Mike, I don't know if
5 you use that, but that's another way to easily keep
6 track of what is used in the exhibits.

7 MR. ELSNER: No, I understand, but we want to
8 keep track with paper copies as well and make sure
9 we have them aligned.

10 MS. FUMETON: Sure, absolutely.

11 BY MS. FUMETON:

12 Q And then Exhibit 5 is the second CV that was
13 submitted with the supplemental report.

14 (Exhibit 5 was marked for identification.)

15 MR. ELSNER: And, Carmen, this is the document
16 that I brought in to you that was printed for you
17 before the deposition began. It's not in an
18 envelope. It's the copy of your CV that does not
19 have an address under your name in the middle of
20 the document.

21 (Exhibit 6 was marked for identification.)

22 BY MS. FUMETON:

23 Q And then Exhibit 6 is that Appendix B. We will
24 publish them for everybody so we make sure we're on
25 the same page, but I just want to make sure you

1 have them in front of you as we go through this.

2 Okay. So Exhibit 1, if you can look at that,
3 Mr. Catizone -- and we're putting it up on the
4 screen too to make sure that we're all on the same
5 page. This Exhibit 1 is the first expert report
6 that you submitted in this litigation, correct?

7 A Yes.

8 Q It is dated April 16, 2021, correct?

9 A Yes.

10 Q Is that the date you completed it?

11 A Yes.

12 Q And if you look at page 105, is that your
13 signature?

14 A Yes, it is.

15 Q Keep it handy. But you can put it aside for a
16 second.

17 I want you to now pull out Exhibit 2, which is
18 the second expert report that you submitted in this
19 litigation. I'll publish that as well to make sure
20 that we're all on the same page.

21 Can you confirm that Exhibit 2 is the second
22 expert report that you submitted in this
23 litigation?

24 A Yes.

25 Q And it is dated May 19, 2021, correct?

1 A Yes.

2 Q Is that the date you completed it?

3 A Yes.

4 Q If you turn to page 105, that your signature?

5 A Yes, it is.

6 Q If you take out what we've marked as Exhibit 3,
7 it's a redline that is showing changes that were
8 made between the two reports.

9 Have you seen this document before,
10 Mr. Catizone?

11 A Yes.

12 Q Did you provide plaintiffs with the redline?

13 A I'm sorry. I didn't understand the question.

14 Q Sure. Did you create the redline documents?

15 A Some of the data came from one of the other experts
16 in there, but I actually prepared the final
17 document and signed off on it.

18 Q And my question is slightly different.

19 Did you prepare the redline, the comparison
20 between the two reports?

21 A Yes.

22 Q And you provided that, then, to Plaintiffs?

23 A Yes.

24 Q Could you pull out Exhibit 4.

25 Can you please confirm that Exhibit 4 is the

1 CV that you submitted with your original report?

2 A Yes.

3 Q Was the CV accurate at the time you submitted it?

4 A I believe so, yes.

5 Q So it was accurate as of April 16th, 2021?

6 A Yes.

7 Q Exhibit 5 is the CV that you submitted with your
8 supplemental report, correct?

9 A Correct.

10 Q And is that CV accurate?

11 A Yes, it is.

12 Q And did you provide a redline showing the changes
13 of that document to your attorney?

14 A No, I did not.

15 Q Exhibit 6 is the Appendix B to your original
16 report, correct?

17 A Was that Exhibit 3 and now marked Appendix B
18 Material Considered? Up on the screen? Yes.

19 Q To make sure the record's clear, it's been marked
20 as Defendants' Exhibit 6 for purposes of your
21 deposition. Again, we'll be referring to other tab
22 numbers that won't be consecutive, and so we will
23 be marking exhibits consecutive. You'll be pulling
24 them from other boxes as well. So the tabs will
25 help you find the documents, but we're going to

1 refer to this document as Exhibit 6.

2 Do you understand?

3 A Yes.

4 Q Is this a list of all of the materials that you
5 considered when preparing both your original and
6 your supplemental reports in this case?

7 A As I mentioned earlier, this includes the primary
8 documents, but not an exhaustive list, because over
9 my 30 years of experience or 35 years, I've
10 accumulated a lot of background knowledge and
11 information that was also helpful in preparing the
12 reports, but not included on the list because the
13 list then would become too exhaustive.

14 Q You obviously had have had a lengthy career and
15 have learned various about things along the way.
16 And so my question isn't does this document reflect
17 everything that you know, but does this document
18 reflect all of the materials that you received
19 specifically to give an opinion in this case?

20 MR. ELSNER: Objection; asked and answered.

21 A Yes.

22 BY MS. FUMETON:

23 Q If you can pull out Exhibit 2, which is your
24 supplemental report, on page 3, Footnote 1 of that
25 report states that "Supplements to the report were

1 made with the Court's May 10, 2021, order, Doc
2 Number 3726 and to include two additional sources
3 that only became available after my initial
4 reported" -- I think that was a typo -- "was
5 submitted."

6 Is that an accurate statement?

7 A Yes.

8 Q And what are the two additional sources you
9 reviewed?

10 A The additional sources were a checklist of one of
11 the defendants and the other information concerned
12 the data, the analysis of data.

13 Q So these two documents -- and I want to ask some
14 more questions about them -- would be in addition
15 to the materials that were listed on Appendix B
16 that you relied upon, correct?

17 A Correct.

18 Q So earlier when you testified that Appendix B
19 contained all of the materials, that wasn't quite
20 correct; is that true?

21 MR. ELSNER: Objection.

22 A Yes.

23 BY MS. FUMETON:

24 Q So other than the two materials that you just
25 mentioned, if we took Appendix B plus those two

1 materials, would that be all of the materials that
2 you reviewed for purposes --

3 MR. ELSNER: Objection.

4 BY MS. FUMETON:

5 Q -- of this litigation?

6 A Yes.

7 Q And so I want to make sure I know specifically what
8 those two additional sources are. So if you
9 mentioned the checklist of one of the defendants,
10 if you turn to Footnote 47, which is page 34 of
11 your report, there's a CVS document that's listed
12 there that was not listed in your prior report.

13 Is that one of the documents that you're
14 referring to?

15 A Yes.

16 Q You also mentioned analysis of data. Can you give
17 me more specificity as to what that additional
18 document is that you reviewed?

19 A When the Court restricted the number of
20 prescriptions that could be included in the report,
21 then the new data analysis was something that I
22 looked at that I didn't have in the first report.

23 Q What about the deposition of John Aidazif? Is that
24 something that you looked at for purposes of your
25 supplemental report that you didn't for your

1 original report?

2 A I'm sorry. I didn't hear that question.

3 Q The deposition of John Aidazif -- I could be
4 mispronouncing the name. It's A-i-d-a-z-i-f -- is
5 that something that you reviewed for purposes of
6 your supplemental report that you did not review in
7 your original report?

8 A I don't remember when I reviewed it, but I did
9 review that document. I don't remember the time
10 frame.

11 Q If you look at page 104 of your report,
12 Footnote 447, you read a "State of Ohio, Board of
13 Pharmacy Pharmacist Workload Survey."

14 Do you see that?

15 A Yes.

16 Q Is that something you reviewed for purposes of your
17 original report?

18 A Yes.

19 MR. ELSNER: Objection.

20 BY MS. FUMETON:

21 Q Footnote -- if you turn to page 51, Footnote 126 of
22 your report references a June 2020 response to
23 interrogatories.

24 Do you see that?

25 A Yes.

1 Q Are you relying on that document for purposes of
2 your opinions in this case?

3 MR. ELSNER: Objection.

4 A Again, I apologize, the last part of your question
5 trailed off. I think you put your head down. I'm
6 sorry.

7 What was the last part of the question?

8 BY MS. FUMETON:

9 Q I'll repeat the question.

10 Are you relying on that document for purposes
11 of your opinions in this case?

12 MR. ELSNER: Objection.

13 A I reviewed the document, but I didn't rely on it
14 for the report. There was other material I relied
15 upon for the report.

16 BY MS. FUMETON:

17 Q When did you first review it?

18 A Probably once I actually received some information
19 from the plaintiffs' counsel and other documents,
20 maybe a month or so into the process.

21 Q What do you mean by "the process"?

22 A Once I was engaged by legal counsel, about a month
23 after that.

24 Q Did you have any input in creating it?

25 A That document, no.

1 Q If you're not relying on it for purposes of your
2 opinions in this case, why did you review it?

3 MR. ELSNER: Objection.

4 A It was background material that I utilized as part
5 of the total number of documents and background
6 material that I looked at. But it wasn't something
7 that I relied on specifically or as a primary
8 document to rely my opinion on.

9 BY MS. FUMETON:

10 Q Are you relying on the Court's May 10th, 2021,
11 order for purposes of forming your opinions in this
12 case?

13 MR. ELSNER: Objection.

14 A I can't recall that document specifically. If it
15 was some of the materials I utilized, it was part
16 of my review, but not something that I would say I
17 relied entirely on or significantly on to form my
18 opinion.

19 BY MS. FUMETON:

20 Q Sir, just to refresh your recollection perhaps, if
21 you'd look at the screen, I'm specifically
22 referencing the order that you've actually
23 referenced a couple of times in your report and as
24 referenced here in Footnote 126.

25 A Yes.

1 Q And so does that reflect or refresh your
2 recollection as to what that document relates to?

3 A Yes, I recall what it relates to, but it didn't
4 influence my opinion. It was one of the documents
5 I reviewed as part of the process.

6 Q When we refer to your report during your
7 deposition, can we have an agreement that that
8 refers to Exhibit 2, your most recent report,
9 unless we specifically say we're referring to
10 Exhibit 1, your earlier report?

11 A Sure.

12 Q Does your report, so Exhibit 2, contain a complete
13 and accurate statement of all of the opinions you
14 intend to offer in connection with this matter?

15 A Yes, unless other questions are asked of me or
16 other information is presented that would cause me
17 to opine on those questions and those -- that
18 information.

19 Q Have you been given any indication that those
20 questions might be posed to you?

21 A No.

22 Q Does your report contain a complete and accurate
23 statement of all the bases for the opinions you
24 formed in connection with in this matter?

25 MR. ELSNER: Objection. You can answer.

1 A Yes.

2 BY MS. FUMETON:

3 Q Does your report contain all the facts that you
4 considered in forming your opinions?

5 A Yes.

6 Q Did you talk to anybody in forming your opinions
7 that are set forth in your report?

8 A Outside of discussions that I may have had with
9 legal counsel, no one else.

10 Q And I just want to be sure I understand exactly who
11 you're referring to. So when you're referring
12 to "legal counsel," are you talking about
13 Mr. Elsner and the four individuals that you
14 referenced earlier?

15 A Yes.

16 Q Is there any other legal counsel that you discussed
17 this report with?

18 A No.

19 Q Are there any other experts in this case that you
20 talked to in forming your opinions in this case?

21 A Yes.

22 Q Who is that?

23 A There was a discussion with an expert witness. I
24 believe his name is Craig McCann.

25 Q How many times did you speak with Mr. McCann?

1 A Probably twice.

2 Q When did you speak with him?

3 A I can't recall the dates. The first time was
4 probably towards the end of summer 2020 and the
5 last time was probably about three or four weeks
6 ago into 2021.

7 Q How long was the first conversation?

8 A One half hour.

9 Q Was it over the phone?

10 A Yes.

11 Q How long was the second conversation?

12 A About the same, half hour.

13 Q Was that also via phone?

14 A Yes.

15 Q What did you talk to Mr. McCann about?

16 A The data analysis that Mr. McCann ran.

17 Q Did you direct Mr. McCann on how to run that data
18 analysis?

19 A When I identified the red flags for my report, I
20 asked Mr. McCann to run the data for those red
21 flags.

22 Q Did he share with you the details of how he was
23 going to run that data?

24 A No.

25 Q Did you leave it up to him to decide how to

1 implement the red flags --

2 A Yes.

3 MR. ELSNER: Objection.

4 BY MS. FUMETON:

5 Q -- that he identified?

6 MR. ELSNER: Objection.

7 BY MS. FUMETON:

8 Q Does Mr. McCann have a background in pharmacy?

9 A Not that I'm aware of.

10 Q Did Mr. McCann have any questions for you about how
11 to run any of the particular red flags?

12 A No.

13 Q Did Mr. McCann represent that he had all the data
14 he needed to run the red flags?

15 MR. ELSNER: Objection.

16 A That question never came up. That issue never came
17 up.

18 BY MS. FUMETON:

19 Q You mentioned the second time you spoke to
20 Mr. McCann was three or four weeks ago. Did that
21 conversation precede your supplemental report?

22 A It was after the report.

23 Q So you issued two reports in this case, Exhibit 1
24 and Exhibit 2, correct?

25 A Correct.

1 Q What I'm trying to understand is when the second
2 conversation with Mr. McCann happened. Did it
3 happen in between your first and second report or
4 after your second report?

5 A It would have been between the first and second
6 report.

7 Q And what did that conversation entail?

8 A That involved the Court's decision May 10th and the
9 fact that the data that was going to be analyzed
10 was not being restricted.

11 Q I want to make sure that the record is clear. I
12 believe that you just testified that you discussed
13 with him the fact of the data that was going to be
14 analyzed was not being restricted.

15 What do you mean by that?

16 A The first conversation was for Mr. McCann to run
17 data analysis on the red flags, which I used for my
18 report. The second conversation was an update
19 after the May 10th court ruling indicating how the
20 data was now going to be restricted and what could
21 be analyzed and presented in my report.

22 Q Is it your understanding that the Court dictated
23 how the data was to be restricted?

24 MR. ELSNER: Objection.

25 A No. It's my understanding the Court limited the

1 total prescriptions that could be analyzed.

2 BY MS. FUMETON:

3 Q What's your basis for that understanding?

4 MR. ELSNER: Objection.

5 A Based upon the numbers and how the numbers changed
6 in the report -- I think if I could refer to my
7 supplemental report, the total number of
8 prescriptions that were actually allowed to be
9 analyzed was reduced by the Court, and that's what
10 was the basis for my statement.

11 BY MS. FUMETON:

12 Q And what's your basis for understanding that it was
13 the Court as opposed to plaintiff that decided to
14 reduce your numbers?

15 A The footnote note that said pursuant to the court
16 order of May 10th.

17 BY MS. FUMETON:

18 Q But you wrote that footnote, right?

19 A Yes.

20 Q So when you wrote that footnote, what did you
21 understand -- how did you come to understand that
22 the Court was dictating how the data was to be
23 restricted?

24 MR. ELSNER: Objection.

25 A When we had a discussion with Mr. McCann and with

1 legal counsel for the plaintiffs, it was explained
2 to me that the total number of prescriptions --

3 MR. ELSNER: Excuse me, stop, please. Carmen,
4 you cannot reveal the conversations that you had
5 with counsel. So if you can answer the question
6 without revealing the conversations that you had
7 with counsel, you may do so. If you can't do that,
8 then you cannot answer the question.

9 MR. SWANSON: This is Brian Swanson. I'm not
10 sure that is correct. If the discussions formed
11 the basis for his opinions, he can disclose those.
12 He's required to.

13 MR. ELSNER: His opinions relate to red flags
14 and how those prescriptions -- and what
15 prescriptions are triggered by those red flags.
16 It's not an interpretation of the Court's order
17 with respect to the procedure in the case.

18 MR. SWANSON: I think we're entitled to know
19 why he limited the prescriptions that he did and
20 what he believed the basis for that was.

21 MR. ELSNER: You do know. The Court ordered
22 us to do so.

23 MR. SWANSON: No, the Court didn't.

24 MR. ELSNER: The Court gave us a choice as to
25 how that ordering could be done, and plaintiffs

1 made that selection. But that's not a proper
2 inquiry to Mr. Catizone. That relates to the
3 Court's procedures with respect to the
4 prescriptions and the red flags identified.

5 MS. FUMETON: Well, we obviously disagree with
6 that assessment, and I think you've just given some
7 more information there.

8 BY MS. FUMETON:

9 Q But, Mr. Catizone, did you understand that it was
10 not, in fact, the Court that dictated how the
11 analysis was to be run but, in fact, plaintiffs had
12 a choice of how they wanted to present the
13 analysis?

14 MR. ELSNER: Objection. You can answer if you
15 can answer that question without revealing
16 conversations with counsel.

17 THE WITNESS: Sure.

18 A In preparing my report, to be quite honest, I
19 didn't care who decided what. I focused on what
20 was going to be analyzed. And whoever made that
21 decision, whether it was the Court, Plaintiffs, or
22 Defendants really didn't have any relevance to my
23 findings or my opinions. I simply knew that the
24 data changes, and it was based upon a court order
25 on May 10th.

1 But as to what happened in those proceedings,
2 who decided what, I didn't ask and I didn't care
3 because I wasn't concerned about that. I was just
4 concerned about the data and the red flags and how
5 the red flags represented my opinion.

6 BY MS. FUMETON:

7 Q So look, we're going to get into this in more
8 depth, and we'll be circling back around to it.
9 But I think we need to be clear about a couple of
10 things.

11 You have in your report, you identify specific
12 red flags that result in a specific number of
13 prescriptions that, according to you, were flagged,
14 correct?

15 A Correct.

16 Q So what's your basis to understand that the numbers
17 that you have in your report reflect the number of
18 prescriptions that were flagged by the criteria you
19 established?

20 MR. ELSNER: Objection.

21 A I heard the question, but I'm not sure I understand
22 the question.

23 BY MS. FUMETON:

24 Q Do you have any understanding of what the numbers
25 in your report reflect?

1 A Yes, actually.

2 MR. ELSNER: Objection.

3 BY MS. FUMETON:

4 Q What do they reflect?

5 A They reflect actual prescriptions that were -- had
6 red flags associated with those prescriptions.

7 Q And what is your understanding of what those red
8 flags actually -- how those prescriptions were
9 chosen?

10 MR. ELSNER: Objection.

11 A My understanding of how they were chosen were
12 whether or not those prescriptions involve opioids,
13 and that is how those prescriptions were selected.

14 BY MS. FUMETON:

15 Q And then you understand that any of the
16 prescriptions that were opioids that hit on your
17 red flags are then included in your report; is that
18 accurate?

19 A Right. Opioids and other controlled substances
20 like benzodiazepines or methadone.

21 Q That hit on the red flags in your report, correct?

22 A Correct.

23 Q In forming your opinions in this -- let me back up.
24 You mentioned that you spoke with Mr. McCann on two
25 occasions. Did you speak with any other

1 individuals that are giving expert opinions in this
2 case?

3 A No.

4 Q Have you reviewed the transcript of Mr. McCann's
5 deposition?

6 A No.

7 Q In forming your opinions in this matter, were you
8 asked to assume any facts?

9 A No.

10 Q Did you make any assumptions in forming your
11 opinions?

12 A No.

13 Q Did anybody assist you in writing your report?

14 A No.

15 Q How did you come up with the numbers in your
16 report?

17 A Well -- I'm sorry. Obviously, Mr. McCann provided
18 the data, but the actual writing of the report and
19 text that accompany those data was all prepared by
20 myself.

21 Q Before you signed your report, did you review it
22 carefully?

23 A Yes, I did.

24 Q Do you agree with all its contents?

25 A Yes, I do.

1 Q Do you take full responsibility for all the words
2 that are contained in your report?

3 A Yes, I do.

4 Q Except where you've expressly quoted from or cited
5 to another source, are the words in your report
6 your own?

7 A Yes.

8 Q Do you understand all the terms used in your
9 report?

10 A Yes.

11 Q On page 7 of your report, so this is Exhibit 2
12 above the heading that says "The Practice of
13 Pharmacy Standard of Care," you have a paragraph
14 the last sentence of which reads, "A complete list
15 of the materials I reviewed is attached as
16 Exhibit A."

17 Do you see that?

18 MR. ELSNER: I'm sorry. I don't.

19 A I don't see it.

20 Q Let me highlight it for you.

21 MR. ELSNER: Oh, yes, thank you.

22 BY MS. FUMETON:

23 Q Do you see that now?

24 A Yes, I do.

25 Q Did you provide an Exhibit A with your report?

1 A Yes.

2 Q Who did you provide that to?

3 A The legal team when I was preparing my report.

4 MS. FUMETON: So, Mike, we'll represent we did
5 not receive an Exhibit A to the report.

6 MR. ELSNER: I'll check into that. It was my
7 understanding that a list of materials was
8 provided --

9 MS. FUMETON: So we think --

10 MR. ELSNER: -- of -- it's listed as
11 Appendix B, "Materials Considered."

12 MS. FUMETON: So that's what I want to clarify
13 to make sure that there was no misunderstanding.
14 So is there no Exhibit A to the supplemental
15 report, correct?

16 MR. ELSNER: I think that's correct. That's
17 correct. We'll confirm on a break. It's my
18 understanding there's no Exhibit A, that it's
19 referred to as Appendix B.

20 MS. FUMETON: Can we just get the witness who
21 wrote the report to testify as to what his
22 understanding is of whether or not his report had
23 an Exhibit A or not?

24 A Based on the information presented, I would say
25 that Exhibit A was changed, then, to Exhibit B.

1 BY MS. FUMETON:

2 Q Changed how?

3 A Since the pandemic and COVID and most of this has
4 been done virtually, once I signed off on a report
5 electronically, I left the formatting up to the
6 legal team as to what made the most sense and what
7 was the proper format. So in probably formatting
8 it that way, Exhibit A was changed to Exhibit B.
9 But I have no objection to that change, and it
10 doesn't change my report at all.

11 Q So just so we're clear, the complete list of the
12 materials that you reviewed is actually Appendix B,
13 which is marked as Exhibit 6 to this deposition,
14 correct?

15 A Correct.

16 Q But you had provided Exhibit A to Plaintiffs; is
17 that correct?

18 A As part of the report, it was marked Exhibit A.
19 But I didn't have any problem with it being changed
20 to Exhibit B.

21 Q Did you know it was changed to Exhibit B?

22 A When I saw the final report, yes.

23 Q But just a couple minutes, I asked you if Exhibit A
24 contains the list of materials relied on, you said
25 yes.

1 A That was -- my apology.

2 Q You were wrong?

3 A Yes.

4 MR. ELSNER: Objection.

5 BY MS. FUMETON:

6 Q Who asked you to be an expert in this matter?

7 A Legal counsel.

8 Q Specifically whom?

9 A Linda Singer.

10 Q When?

11 A Sometime in July/August 2020.

12 Q Is that the first time you had spoken to anybody
13 about this litigation?

14 A Yes.

15 MR. ELSNER: Objection.

16 BY MS. FUMETON:

17 Q How were you introduced to Ms. Singer?

18 A I was recommended to her by someone. She didn't
19 say who. She simply said my name had come up as an
20 expert that could be utilized and she picked up the
21 phone and gave me a call.

22 Q What did she tell you as to what expert opinion she
23 wanted you to give in this case?

24 MR. ELSNER: Objection.

25 A She asked if I was -- she had seen my testimony in

1 other cases and knew I was familiar with red flags
2 and corresponding responsibility and asked if I was
3 willing to serve as an expert witness in regard to
4 corresponding responsibility and red flags.

5 BY MS. FUMETON:

6 Q Did she tell you who she represented?

7 A Not at the time.

8 Q Did you understand that she was representing
9 plaintiffs in that action?

10 A Prior to signing the agreement, yes, or the
11 engagement, yes.

12 Q During that initial conversation?

13 A After the initial call, I took some time to think
14 about whether or not my schedule would permit it
15 and then phoned her back and said I was available
16 and then asked for more details.

17 Q You mentioned that the plaintiffs -- you knew that
18 the plaintiffs in this particular matter are Lake
19 and Trumbull Counties. Have you been asked or have
20 you been retained by any other entities in
21 opioid-related litigation?

22 MR. ELSNER: Objection. He can answer to the
23 extent that he's been designated as an expert
24 witness, but should not answer to the extent that
25 he's been served as a consulting expert for anyone

1 else.

2 So, Carmen, to the extent you've been
3 disclosed as an expert, feel free to answer that
4 question.

5 THE WITNESS: Sure.

6 A Included in my résumé -- and I'm not sure which
7 exhibit it now is -- there's a list of those trials
8 and cases involving opioids where I have served as
9 an expert witness for litigation.

10 BY MS. FUMETON:

11 Q And we'll go through those in more depth in a
12 little bit. Those are all entities in which -- I'm
13 sorry. All cases in which you've already given
14 testimony, correct?

15 A Correct. Some of the cases were testimony and some
16 just reports.

17 Q Right. So my question was slightly different.

18 Have you been retained by other plaintiffs in
19 opioid litigation to serve as an expert where
20 you've not yet given testimony?

21 A No.

22 Q Have you been retained as a consultant by anybody
23 in opioid-related litigation? And to be clear, I'm
24 not asking who. I'm not asking for details. This
25 is a yes-or-no question.

1 MR. ELSNER: Objection. If he is a
2 nontestifying consultant to any plaintiff -- and I
3 don't know if he is or isn't for some -- that's not
4 an appropriate question to ask.

5 MS. FUMETON: I think generally speaking what
6 type of consulting work he does and what type of
7 clients he has are. And if he's been retained as a
8 consultant in connection with a litigation, again,
9 if it's a yes-or-no answer, I think we're entitled
10 to know it.

11 MR. ELSNER: If you want to know yes or no,
12 you can ask that way. If you're going to probe
13 into the specific cases or ask about opinions. So
14 I think generally you can ask --

15 So Carmen, yes or no, have you served as a
16 nontestifying consulting witness in any opioid
17 litigation?

18 A Yes.

19 BY MS. FUMETON:

20 Q And to be clear, I'm talking about litigation
21 that's associated with the MDL in which your
22 testimony is being given today.

23 A The answer is no.

24 Q Okay. What about in any related -- other state or
25 federal actions relating to opioid litigation?

1 A Yes.

2 Q You've been retained by the United States
3 Attorney's Office in a case brought by the United
4 States against Walmart, correct?

5 MR. ELSNER: Objection. If that's been
6 disclosed --

7 MS. FUMETON: That's disclosed.

8 MR. ELSNER: If it has been disclosed
9 publicly, then you can answer that, Carmen. If it
10 has not been disclosed publicly, then you cannot
11 answer.

12 A I don't know if that's been disclosed publicly.
13 If, Ms. Fumerton, you're saying it's been disclosed
14 publicly, then the answer would be yes. If it
15 hasn't been disclosed publicly, then I can't
16 confirm that.

17 BY MS. FUMETON:

18 Q You are being compensated in this matter at a rate
19 of \$300 per hour, correct?

20 A Correct.

21 Q In other opioid-related litigation where you've
22 given testimony, have you also charged \$300 per
23 hour?

24 A No.

25 Q How has it varied?

1 A Some cases I've charged \$800 an hour; on other
2 cases I've charged \$200 an hour.

3 Q All in opioid-related litigation?

4 A Yes.

5 Q Do you know how much you've been paid for your work
6 on this matter to date approximately?

7 A Maybe \$30,000 total.

8 Q Do you know what outstanding bills you have to
9 plaintiffs --

10 A Yes.

11 Q -- that have not been paid?

12 A Yes.

13 Q How much?

14 A Roughly \$25,000.

15 MR. ELSNER: Objection.

16 BY MS. FUMETON:

17 Q We are going to mark as a composite exhibit
18 invoices that have been submitted in this case.
19 And they are going to be Tab 41 through 51 in your
20 box, if you want to open them. We will put them
21 all together and mark them as one exhibit.

22 A What were the numbers again?

23 Q 41 through 51.

24 MS. FUMETON: And there's also one additional
25 one that we received last night. Mike, were you

1 able to print that out?

2 MR. ELSNER: Yes, but I don't know if he has
3 that in front of him. So we'll try to do that.

4 MS. FUMETON: Okay. And I think we will put
5 on the screen. So I don't think we need to pause
6 for that. But if you do need the hard copy, you
7 can let us know.

8 BY MS. FUMETON:

9 Q Let me know when you've had a chance to open up
10 those documents.

11 A I've got them here. So go ahead.

12 MS. FUMETON: Can we mark as Exhibit 7 --

13 BY MS. FUMETON:

14 Q For the record, they're invoices that Plaintiffs'
15 counsel have provided to us for work that you've
16 done from May 2020 through May 2021.

17 (Exhibit 7 was marked for identification.)

18 Q And that last one is the one I don't think -- you
19 may not have in front of you. But we'll show it on
20 the screen.

21 MR. ELSNER: I think we just gave him a copy
22 of that, so he should have it now.

23 MS. FUMETON: Okay.

24 MR. ELSNER: It looks like 40 is not --

25 MS. FUMETON: Tab 41, I'm sorry. Tab 41 to

1 51.

2 MR. ELSNER: I'm sorry. I accidentally opened
3 40. So my apologies.

4 BY MS. FUMETON:

5 Q So this is, what we have on the screen, as I said,
6 it's a composite exhibit of all of the invoices
7 that Plaintiffs' counsel have provided to us to
8 date, and they have represented that they are the
9 invoices that you have submitted.

10 Can you take a quick minute, Mr. Catizone, to
11 review them and to confirm that what has been
12 marked as Defendants' Exhibit 7 are, in fact, the
13 invoices that you have submitted for your work in
14 this case from May 2020 until --

15 MR. ELSNER: Sorry. Objection, asked --

16 MS. FUMETON: -- May 2021. Sorry.

17 MR. ELSNER: Sorry. I don't think he's had a
18 chance to open them. I certainly haven't.

19 MS. FUMETON: Okay, yeah. He told me to go
20 ahead. That's what I thought. If you haven't had
21 time to open them, yeah, please go ahead.

22 MR. ELSNER: If you're going to ask him about
23 all of them, maybe the tech then can flip through
24 the exhibits so he can see what you're referencing
25 if you are going to ask about them collectively.

1 MS. FUMETON: Sure.

2 BY MS. FUMETON:

3 Q Well, Mr. Catizone, how would you prefer to do it?
4 You have the hard copies in front of you, so we
5 don't have to flip to the screen. Is that easy
6 enough for you to see on the screen?

7 A If you go in order, I'm opening them one at a time
8 now. If you want to start with the May 20, that's
9 fine with me.

10 Q I actually just want -- we're not going to spend
11 time on each of these. I just want to confirm that
12 these are all of the invoices that you've submitted
13 to date.

14 A Give me a few moments to open all of them so I can
15 check that, please.

16 Did you say packet 51, Exhibit 51?

17 Q 51, and the one that was just handed to you should
18 be the last two.

19 A So 51 is not ours. It's a receipt for travel
20 expenses and a meeting.

21 Q Okay. So I guess Exhibit -- or Tab 50 would be the
22 last one, plus the one that was delivered to you.

23 A Okay.

24 MS. FUMETON: Kristen, let's just confirm --

25 A All appear to be as I have submitted them.

1 BY MS. FUMETON:

2 Q Okay. Can we flip to the last two pages, Kristen,
3 of this exhibit, just to we can make sure that we
4 are all -- it gets introduced properly.

5 A Okay.

6 MS. ZINMASTER: Tara, this is the last page?
7 The expenses are included in here as well.

8 MS. FUMETON: So we'll just note for the
9 record that there are -- are these expenses?

10 BY MS. FUMETON:

11 Q So this is tab 51. Are those expenses that you
12 submitted in connection with this matter too?

13 A Exhibit 51 has the hotel and parking receipt but
14 not the airfare. So that's part of the expenses I
15 submitted.

16 Q Okay. But there were other expenses you submitted
17 as well; is that right?

18 A Correct.

19 Q But with the exception of those expenses, do these
20 otherwise reflect all of the invoices that you've
21 submitted in connection with this matter?

22 A Yes.

23 Q And earlier you testified that Linda Singer
24 contacted you about becoming an expert in this
25 matter in July or August of 2020. But if we go to

1 the first page of Exhibit 7, it appears that you
2 submitted an invoice for work on this matter in
3 May of 2020.

4 Do you see that?

5 A Yes.

6 Q Do you stand by your testimony that you were first
7 contacted about testifying in this litigation in
8 July or August of 2020?

9 A For this litigation, yes.

10 Q So what work were you contacted about doing in
11 May of 2020?

12 MR. ELSNER: Objection.

13 A It involved the Washington Board of Pharmacy, which
14 was that last item down there.

15 BY MS. FUMETON:

16 Q So does this first invoice not reflect work that
17 you did in connection with this matter?

18 MR. ELSNER: Objection.

19 A Not directly. It was more for the Washington Board
20 of Pharmacy, questions that I was being asked.

21 BY MS. FUMETON:

22 Q And who was asking you the questions?

23 A I was working with Linda Singer at the time.

24 Q So prior to Linda approaching you about working as
25 an expert in this case, you were working with her

1 on something else?

2 MR. ELSNER: Objection.

3 A Yes. The Washington Board of Pharmacy matter.

4 BY MS. FUMETON:

5 Q And what was the Washington Board of Pharmacy
6 matter?

7 MR. ELSNER: Objection. I think this is as
8 far as we can permit this line of questioning to go
9 to the extent he wasn't disclosed as a testifying
10 expert in that case.

11 MS. FUMETON: But, Mike, earlier he just
12 testified that these are all of the invoices that
13 he submitted in connection with this matter. Now
14 he's testifying --

15 (Simultaneous conversation.)

16 MR. ELSNER: You can inquire as to the
17 invoices. I've permitted you to do that, but that
18 last question appeared to seek to probe the work
19 that he was doing in the Washington opioid
20 litigation, and I'm not going to permit him to
21 answer questions related to that work. You can ask
22 him about the invoices. We've provided them, and
23 he's given you some general answers.

24 BY MS. FUMETON:

25 Q Okay. So the first document in Defendants'

1 Exhibit 7 is not an invoice that you submitted in
2 connection with this matter. Is that now accurate?

3 A If I can clarify for you, I simply submitted
4 documents to Motley Rice, and whether or not any of
5 the information I provided there applied to the
6 case, I left up to the attorneys. So if I talked
7 about the red flags and others and that became
8 something that was used later in the case, at that
9 point I was just having the conversation regarding
10 the Washington Board of Pharmacy and that
11 information. But I didn't distinguish between
12 cases. All of my invoices were submitted to Motley
13 Rice.

14 Q When were you first introduced to Linda Singer?

15 A It was right around this time in May when she
16 called and asked about the Washington Board of
17 Pharmacy.

18 Q Okay. So when you had a conversation with her in
19 July or August about this case, you already knew
20 her, correct?

21 A Yes.

22 Q Did you work with anybody else from Motley Rice
23 prior to the work that's reflected here in May of
24 2020?

25 A No.

1 Q And earlier when I was asking you how you were
2 introduced to Ms. Singer, was that testimony
3 referring to when you were introduced to her for
4 this work involving the Washington Board of
5 Pharmacy?

6 MR. ELSNER: Objection.

7 A You know what, when you asked me the question, I
8 interpreted it as when was I first introduced to
9 this case and asked to become a part of it by Linda
10 Singer, and that's how I interpreted it. I was
11 introduced to Linda Singer because of the
12 Washington Board of Pharmacy issue, and that was
13 sometime in May.

14 BY MS. FUMETON:

15 Q So if we go to the next invoice, so the next
16 page of Defendant Exhibit 7, this is reflecting
17 work that does done in June. So this is also prior
18 to you being retained to provide expert testimony
19 in this case; is that accurate?

20 MR. ELSNER: Objection.

21 A I would have to double-check when the retainer took
22 place, but it probably was around this time, June,
23 July, or August. My apologies for not knowing the
24 exact date.

25 BY MS. FUMETON:

1 Q So your testimony now is that you think it was
2 June when you were first contacted by Ms. Singer
3 about providing testimony in this litigation; is
4 that right?

5 MR. ELSNER: Objection.

6 A Not about this case, but about a related -- about
7 questions regarding whether or not I was going to
8 be available for this case.

9 BY MS. FUMETON:

10 Q So if you would look at that page that is on the
11 screen right now, which is the second page of
12 Exhibit 7, it references June 24th, 2020, review
13 interrogatory 0.5 hours.

14 Do you see that?

15 A Yes.

16 Q What interrogatory is that?

17 A That was a document that was sent to me as part of
18 a discussion about whether or not I was qualified
19 as an expert witness to talk about red flags, and I
20 think it was one of the documents in the case, but
21 I'm not sure what exactly that interrogatory was
22 because I really didn't review the document. It
23 was provided to me as a "Are you familiar with red
24 flags?" And I said "Yes" and explained what my
25 familiarity was.

1 Q Is that June 2020 interrogatory as reflected on
2 that invoice the same June 2020 interrogatory that
3 we were talking about earlier this morning?

4 MR. ELSNER: Objection.

5 A I'm sorry. What interrogatory were we talking
6 about earlier.

7 BY MS. FUMETON:

8 Q You referenced a June 2020 interrogatory in your
9 expert report, correct?

10 A Yes, yes, that's the same.

11 Q Is it the same --

12 So putting aside the first invoice, the rest
13 of the invoices in Exhibit 7 are all invoices you
14 submitted in connection with this matter, correct?

15 A Correct.

16 Q And it adds up to about 170 hours, give or take a
17 few.

18 Does that sound about right?

19 A I haven't done the math, but I will trust you.

20 Q Does it sound about right to you, though?

21 A Sure.

22 Q We've not received an invoice for June.

23 Do you know how many hours you have worked so
24 far this month, approximately?

25 A Somewhere between 20 and 30.

1 Q And according to the invoices, it appears that you
2 spent a little over 50 hours preparing for your
3 deposition in this matter.

4 Does that sound about right?

5 A Yes.

6 MR. ELSNER: Objection.

7 BY MS. FUMETON:

8 Q How many of the hours that you have billed were
9 spent on your supplemental report?

10 MR. ELSNER: Objection.

11 A Every time I reviewed a document or reviewed
12 information, my supplemental report was always
13 there, and I was always making changes or adding to
14 that report. So I couldn't calculate the amount of
15 time, but it was -- primarily what I was focused on
16 was preparing that report.

17 BY MS. FUMETON:

18 Q Well, let me ask you this. When did you learn that
19 you would be doing this supplemental report?

20 A I don't remember.

21 Q Well, your first report in this matter was on
22 April 16th, correct?

23 A Yes.

24 Q April 16th, 2021, right?

25 A Yes.

1 Q At that time, did you think you would be providing
2 supplemental report?

3 A No.

4 Q So you weren't working on the supplemental report
5 then, right?

6 A Correct.

7 Q And then your supplemental report was served on
8 May 19th, right?

9 A Yes.

10 Q So let's look at the May 2021 invoice. And that's
11 the one that was just provided to us, so it should
12 be the last one that you received.

13 Do you have that in front of you? It's also
14 up on the screen.

15 A Yes.

16 Q Is any of that time there reflected billing your --
17 for billing for the supplemental report?

18 MR. ELSNER: Objection.

19 A Yes.

20 BY MS. FUMETON:

21 Q For drafting the supplemental report?

22 A Yes.

23 Q So of all the dep preps that are listed there,
24 which one is for drafting the supplemental report?

25 MR. ELSNER: Objection.

1 A Probably May 6th, 7th, 9th, 10th, 11th, 13th, and
2 14th.

3 BY MS. FUMETON:

4 Q So how many hours do you think that you --

5 A It looks like about 20 hours.

6 Q So earlier when you said "Every time I reviewed a
7 document or reviewed information, my supplemental
8 report was there," what do you mean by that?

9 A I considered the report really one document, the
10 first report and the supplemental report. So every
11 time it was information that I was preparing the
12 report, I would validate that information or update
13 the report.

14 After the data was altered or changed in May,
15 then I began to look at the new data statistics and
16 again, prepared and reviewed that supplemental
17 report because it was going to be part of this
18 deposition. And I knew it would be a primary
19 document, so that's why it was listed as dep prep.
20 And that's what I did then is review the facts and
21 go back over that document.

22 Q So in other parts of your invoice, you write "Draft
23 Report," correct?

24 A Correct.

25 Q But for your supplemental report, you agree you

1 didn't submit any invoice that said "drafting
2 report" correct?

3 MR. ELSNER: Objection.

4 A Correct.

5 BY MS. FUMETON:

6 Q If we look at the June 2020 invoice -- we'll pull
7 it up on the screen so you can get to the right
8 spot too.

9 The June 26th entry says "Review P&Ps."

10 Do you see that?

11 A Yes.

12 Q What are P&Ps?

13 A Policies and procedures.

14 Q Are those referring to the policies and procedures
15 of the defendants for whom you give opinions in
16 this case?

17 A No.

18 Q What policies and procedures are you referring to?

19 MR. ELSNER: Objection.

20 A Washington Board of Pharmacy.

21 BY MS. FUMETON:

22 Q If you go to the September and October invoice on
23 October 30th, 2020, you have an interview that says
24 "Call - Interview."

25 Do you see that?

1 A Yes.

2 Q Who did you interview?

3 MR. ELSNER: Objection.

4 A The plaintiffs' legal team.

5 BY MS. FUMETON:

6 Q Did you rely on information that they gave you in
7 forming the opinions in your case -- in this case?

8 A For that call with the interview?

9 Q Yes.

10 A No.

11 Q Well, no. Let me ask the question.

12 When you -- did plaintiffs provide you any
13 information that you relied on for purposes of
14 forming your opinions in this case?

15 A As mentioned earlier, the data analysis from
16 McCann.

17 Q Was there anything else that plaintiffs asked you
18 to assume or facts that they gave you that you
19 relied on for purposes of your expert report?

20 A No.

21 MR. ELSNER: Objection.

22 BY MS. FUMETON:

23 Q Why were you interviewing Plaintiffs' counsel on
24 October 30, 2020, for purposes of your report?

25 MR. ELSNER: Objection.

1 A They were actually interviewing me.

2 BY MS. FUMETON:

3 Q For what purpose?

4 MR. ELSNER: Objection.

5 You can answer that, Carmen, if you can do so
6 without revealing the content of any conversations
7 with counsel. It's hard for me to imagine how you
8 could. But if you can, you can answer. But please
9 do not reveal any communications with counsel.

10 A I think it was to introduce me to the legal team in
11 this issue.

12 BY MS. FUMETON:

13 Q So you started drafting the report, though,
14 however, before you were introduced to the legal
15 team or the issues in the case; is that right?

16 MR. ELSNER: Objection.

17 A No, no.

18 BY MS. FUMETON:

19 Q Okay. So when you see on this particular
20 interview -- invoice that we're looking at all
21 these entries for "Draft Report, what report is
22 that referring to?

23 A That was Report 1 and the supplemental report.

24 Q So in October 2020, you were drafting the
25 supplemental report --

1 MR. ELSNER: Objection.

2 BY MS. FUMETON:

3 Q -- for this case?

4 A Since the supplemental report was not changed much
5 from the first report, ultimately that's where
6 everything led to.

7 Q You testified two minutes ago that the interview on
8 October 30th was to introduce you to the legal team
9 and the issues in this case, correct?

10 A No, no, just to the legal team. The entire legal
11 team involved in this matter.

12 Q So you had already been told what your assignment
13 was with respect to this expert report prior to
14 October 30th, correct?

15 A Not an assignment.

16 Q How did you know what report to start drafting,
17 then, if you didn't know what your assignment was
18 in this case?

19 MR. ELSNER: Objection.

20 A I was asked to opine on corresponding
21 responsibility and red flags similar to other cases
22 in which I had provided reports and testified. And
23 to analyze data and information that was provided
24 to me by Plaintiffs' counsel and to draft a report
25 of my findings.

1 BY MS. FUMETON:

2 Q And you had started that, then -- it's referring to
3 draft report in these invoices. That's the report
4 that you submitted in this case, correct?

5 A I'm sorry. I didn't hear the whole question.

6 Q That's the report you submitted in this case,
7 correct?

8 A Correct.

9 Q If we go to the February/March 2021 invoice, I want
10 to ask you about a particular entry there.

11 What does "Report and PQAC" refer to?

12 A That is actually the appropriate and proper name
13 for the Washington Board of Pharmacy. It's the
14 Pharmacy Quality Assurance Commission. And it
15 refers back to the Washington Board of Pharmacy.

16 Q Are all the other references to drafting the report
17 and the invoices the report that you submitted in
18 this case?

19 A Correct.

20 MS. FUMETON: I'm about to switch topics, if
21 we would like to take a five-, ten-minute break.

22 THE WITNESS: I'm good.

23 MR. ELSNER: That's fine. We're happy to do
24 that.

25 MS. FUMETON: Why don't we say we'll be back

1 in ten, then.

2 THE VIDEOGRAPHER: We're off the record.

3 (A recess was taken.)

4 THE VIDEOGRAPHER: We're on the record.

5 BY MS. FUMETON:

6 Q Mr. Catizone, can you pull out your Appendix B,
7 which is the materials you considered for your
8 report. It has been marked as Exhibit 6 in this
9 litigation -- I'm sorry -- in this deposition.

10 How did you select the materials on this list
11 to be the relevant materials in forming your
12 opinion?

13 A Some of the materials were provided to me by legal
14 counsel and then other materials, once I began my
15 review, I requested.

16 Q Which are the materials that you requested, if you
17 can summarize general categories as opposed to
18 necessarily specific ones?

19 MR. ELSNER: Objection.

20 A General categories would be policies and procedures
21 of the defendants, the data that Mr. McCann's group
22 provided are probably the two main areas.

23 BY MS. FUMETON:

24 Q And what did you understand was the universe of
25 materials that plaintiffs were providing you?

1 MR. ELSNER: Objection.

2 A The material would be or the universe would be what
3 was important information about the defendants and
4 red flags and corresponding responsibility.

5 BY MS. FUMETON:

6 Q So plaintiffs selected what was important
7 information about the defendants' red flags and
8 corresponding responsibility, correct?

9 MR. ELSNER: Objection.

10 A My understanding is they went through documents,
11 and based upon the documents that were relevant is
12 what was provided to me. And then I requested
13 additional documents if I didn't see something that
14 I thought I needed.

15 BY MS. FUMETON:

16 Q So at least in the first instance, the plaintiffs
17 selected what documents you should review, correct?

18 A Yes.

19 Q And made the determination as to what is relevant,
20 correct?

21 MR. ELSNER: Objection.

22 A Yes.

23 BY MS. FUMETON:

24 Q Did you request any materials from Plaintiffs'
25 counsel that you did not receive?

1 A No.

2 Q Were there any materials that you thought would be
3 relevant that you did not have?

4 A Yes.

5 Q What were those?

6 A The patient notes and other documentation that the
7 defendants have. And I'm not sure if they've
8 agreed to provide those to me, but those would be
9 very relevant to my work.

10 Q And why would they be relevant to the
11 identification of red flags?

12 A Some primary requirements of corresponding
13 responsibility is when resolving the red flags, and
14 then two, documenting the red flags. And based
15 upon the materials I reviewed of the defendants,
16 the documentation would help me determine whether
17 or not the defendants complied with their own
18 policies and procedures and what prescriptions
19 actually led to diversion or what prescriptions
20 where the red flags were resolved.

21 Q And so you didn't have access to the documentation
22 that the defendants had.

23 Is that your understanding?

24 MR. ELSNER: Objection.

25 A Yeah, I'm sorry I didn't have access to, and then

1 the last part I didn't hear.

2 BY MS. FUMETON:

3 Q You did not have access to the documentation -- I'm
4 sorry. Let me repeat that.

5 You did not have access to the documentation
6 that the defendants had. Is that your
7 understanding?

8 MR. ELSNER: Objection.

9 A My understanding is that the defendants didn't want
10 to turn that information over.

11 BY MS. FUMETON:

12 Q Okay. So you don't -- aren't saying that the
13 information doesn't exist. You're saying that you
14 just didn't have an opportunity to review that; is
15 that correct?

16 A Correct.

17 MR. ELSNER: Objection.

18 BY MS. FUMETON:

19 Q Do you know how many documents the pharmacy
20 defendants produced in this case?

21 A No.

22 Q Do you have any concept or estimate?

23 A No.

24 Q Do you have any sense of what percentage of the
25 documents that the pharmacy defendants produced in

1 this case that you reviewed in formulating your
2 opinion?

3 A No.

4 Q Could it be 1 percent?

5 MR. ELSNER: Objection.

6 A If I have no idea what the total was, I would have
7 no idea what the percentage was either.

8 BY MS. FUMETON:

9 Q So it could be 1 percent?

10 MR. ELSNER: Objection.

11 BY MS. FUMETON:

12 Q Is that right?

13 A I have no idea. I've answered that.

14 Q And it doesn't matter for purposes of your opinion
15 whether you reviewed 1 percent or 99 percent. Is
16 that what you're saying?

17 A Correct.

18 Q And if you reviewed less than 1 percent of the
19 document that the defendants produced, that still
20 wouldn't make a defense to you as to how you
21 reached your opinions, correct?

22 MR. ELSNER: Objection.

23 A The percentage is insignificant compared to the
24 documents themselves and the data that I reviewed
25 that helped formulate my opinion.

1 BY MS. FUMETON:

2 Q But you don't know what you didn't review, correct?

3 A I know what I did review, and that was the basis of
4 my opinion.

5 Q And you don't know what exists that defendants
6 produced that you didn't review, correct?

7 A Correct.

8 Q For the materials you listed on Exhibit 6, did you
9 review the entirety of all those documents?

10 A Yes.

11 Q Do you have an estimate as to how many pages of
12 documents you reviewed?

13 A No.

14 Q How long did you spend reviewing those documents
15 before formulating your opinions? Do you know?

16 MR. ELSNER: Objection.

17 A Hours and hours and hours.

18 BY MS. FUMETON:

19 Q Well, we know it's less than 170 hours, correct?

20 A Correct.

21 Q Do you know how much less than 170?

22 MR. ELSNER: Objection.

23 A I don't.

24 BY MS. FUMETON:

25 Q Did you review any other expert reports submitted

1 in connection with this matter?

2 A No.

3 Q Did you review the expert report of Craig McCann?

4 A Yes.

5 Q Did you review any other expert reports submitted
6 in connection with this matter?

7 A No.

8 Q In a number of places in Exhibit 6, you listed
9 defendants, quote, dispensing data samples, so for
10 example, the Walmart dispensing data sample. What
11 is that referring to?

12 A The dispensing data that McCann's group provided to
13 me in his report.

14 Q Did you review any data that Mr. McCann provided
15 other than what he put in his report?

16 MR. ELSNER: Objection.

17 A No.

18 BY MS. FUMETON:

19 Q So did you review any specific prescriptions?

20 A No.

21 Q So you just reviewed the result, the aggregate
22 numbers of his analysis; is that accurate?

23 MR. ELSNER: Objection.

24 A Yes.

25 BY MS. FUMETON:

1 Q You haven't looked at any specific prescriptions in
2 connection with this matter, correct?

3 A I have looked at a few of those prescriptions.

4 Q In what context?

5 A In the context of Mr. McCann's report where he
6 noted that information was inaccurate, missing, or
7 made up concerning the doctor DEA and the doctor's
8 address, and information that was there about
9 whether doctors should be arrested or not or were
10 arrested, I did review a small number of scripts
11 that validated what Mr. McCann had in his report.

12 Q How would we identify what small number of scripts
13 you validated?

14 MR. ELSNER: Objection.

15 A I would say I would look up maybe 10 to 20
16 prescriptions that were part of that notation in
17 Mr. McCann's report.

18 BY MS. FUMETON:

19 Q And those are the only specific prescriptions that
20 you reviewed in connection with this -- with your
21 report, correct?

22 MR. ELSNER: Objection.

23 (Stenographer requested clarification.)

24 A Correct. Sorry.

25 BY MS. FUMETON:

1 Q So just to make sure that I'm clear, when you say
2 that, in Exhibit 6, you reviewed you Walmart's
3 dispensing data sample, you're not referring to any
4 particular Walmart prescriptions, correct?

5 MR. ELSNER: Objection.

6 A Not individual prescriptions, except for the ones
7 that I just mentioned.

8 BY MS. FUMETON:

9 Q And do you know whether any of those were Walmart
10 prescriptions?

11 MR. ELSNER: Objection.

12 A I don't recall.

13 BY MS. FUMETON:

14 Q Switching gears to your CV, I'm going to ask you
15 questions both about Exhibit 4 and Exhibit 5,
16 Exhibit 4 being the first CV you submitted and then
17 Exhibit 5 being the second one you submitted, if
18 you want to have those in front of you.

19 Why did you provide an updated CV in
20 connection with this supplemental report?

21 A Because I retired from the National Association of
22 Boards of Pharmacy as executive director.

23 Q And when did that happen?

24 A That was in May of 2020.

25 Q And I think you testified earlier that the CV that

1 you submitted as of April 16th, 2021, was accurate,
2 correct?

3 MR. ELSNER: Objection.

4 A To the best of my understanding, yes.

5 BY MS. FUMETON:

6 Q Okay. So this is Exhibit 4 that you submitted in
7 April of 2021, and on the first page it says
8 Dr. Catizone is the executive director of the
9 National Association of Boards of Pharmacy.

10 Do you see that?

11 A Yes.

12 Q That was not accurate as of April 15th, 2021,
13 correct?

14 A That was -- that was accurate.

15 MR. ELSNER: Objection.

16 A Did you say April 2020 or April 2021?

17 BY MS. FUMETON:

18 Q April 2021.

19 A No, that was not correct.

20 Q Okay. But this is the CV that you submitted with
21 your expert report in this case that was provided
22 to the defendants on April 15, 2021, correct?

23 A It was submitted much earlier than that, prior to
24 me having a chance to revise it.

25 Q Are you aware that this is the document that was

1 provided with your expert report on April 15th,
2 2021?

3 A I would assume it was.

4 Q So it was not accurate as of April 20th, 2021,
5 correct -- I'm sorry, April 16th, 2021, correct?

6 A It hadn't been updated, so yes.

7 Q So it was not accurate, correct?

8 A Correct.

9 MR. ELSNER: Objection.

10 BY MS. FUMETON:

11 Q So why did you update -- I'll ask again. Why did
12 you update your CV with your supplemental report?

13 A For one, my CV has not been something that I've
14 been concerned about, and so I don't spend a lot of
15 time writing about myself or updating it. When I
16 finally had time to sit down and review it and
17 update it, that's when I update it.

18 Q In your first CV in this matter, Exhibit 4, you
19 provided the dates in which you received your
20 degrees and licenses, correct?

21 A Correct.

22 Q Why did you remove them in your second CV,
23 Exhibit 5?

24 MR. ELSNER: Objection.

25 A Just a format change. No particular reason.

1 BY MS. FUMETON:

2 Q What else did you update in your résumé or change
3 in your résumé?

4 A I really don't know. I'd have to go through it to
5 see what the changes were.

6 Q Is it not that important to you what your résumé
7 says?

8 MR. ELSNER: Objection.

9 A From a personal perspective, no. I'm kind of a
10 modest person, and my CV is not something that I've
11 considered important.

12 BY MS. FUMETON:

13 Q So your first CV, which we've shown on your screen,
14 you refer to yourself as Dr. Catizone, correct?

15 A Correct.

16 Q And in your second CV, which is Exhibit 5, you
17 refer to yourself as Mr. Catizone, correct?

18 A Correct.

19 Q Why did you make the change?

20 A While I was executive director of NABP, the state
21 of Oklahoma through the Oklahoma board of pharmacy
22 provided me the designation of doctor of pharmacy,
23 and out of respect for a member of NABP and the
24 honor bestowed on me, I used that title of doctor.
25 But once I was no longer the executive director and

1 just a consultant, then I changed it to
2 Mr. Catizone.

3 Q So do you still have the honorary doctorate or was
4 that withdrawn?

5 A I still have that honorary doctorate. It's not a
6 doctorate degree, it's a designation.

7 Q You do not have a doctor of pharmacy, correct?

8 A Correct.

9 Q And so you don't feel it would be appropriate to
10 refer to yourself as a doctor of pharmacy, correct?

11 A I didn't hear that. I'm sorry.

12 Q You don't feel it would be appropriate to refer to
13 yourself as a doctor of pharmacy, correct?

14 MR. ELSNER: Objection.

15 A It's not whether it's appropriate or not. That is
16 a title. It's a title I choose not to use.

17 BY MS. FUMETON:

18 Q Now, correct?

19 A Correct.

20 Q You did previously use it?

21 A Yes.

22 Q For how many years did you use it?

23 A Let me check the résumé. Since 2001.

24 Q And when did you stop using it?

25 A As soon as I retired from NABP.

1 Q On your first CV in this matter, if you look at
2 Exhibit 4, in the last full paragraph on the first
3 page, you listed one of your many honors and
4 awards, the "University of Illinois, College of
5 Pharmacy, Alumni Association's Sister Margaret
6 Wright Graduate Award," correct?

7 A Yes.

8 Q But in your second CV in this matter, Exhibit 5,
9 you removed that award, correct?

10 A Correct.

11 Q Why?

12 A Again, it was a matter of modesty. I didn't want
13 to appear egotistical or to put things in my résumé
14 that were really just something I considered an
15 honor, but didn't feel I needed to brag about that.

16 Q So looking at your current CV, Exhibit 5, you list
17 another award, the "University of Illinois, Alumnus
18 of the Year."

19 Do you see that?

20 A Yes.

21 Q And is that an award you received?

22 A Yes.

23 Q And to be clear, though, that award was not on
24 behalf of the entire University of Illinois,
25 correct?

1 A No, it was.

2 Q Well, what you actually received was the University
3 of Illinois Chicago Pharmacy Alumnus Award in 1997,
4 correct?

5 A No. It was the University of Illinois, College of
6 Pharmacy, which is part of the University of
7 Illinois.

8 Q Right. But you're aware that the University of
9 Illinois also has a prestigious alumni achievement
10 award, correct, for the entire university?

11 MR. ELSNER: Objection.

12 A I wasn't aware of that.

13 BY MS. FUMETON:

14 Q You're unaware that the University of Illinois has
15 something called the University of Illinois Alumni
16 Award?

17 A Yes.

18 Q But to be clear, it was the University of Illinois
19 Chicago Pharmacy Alumni Award that you received,
20 correct?

21 A Chicago College of Pharmacy which has since been
22 renamed. The college has been renamed.

23 Q Okay. Is that relevant to the award?

24 MR. ELSNER: Objection.

25 BY MS. FUMETON:

1 Q What was the name of the award when you received
2 it?

3 A Chicago College of Pharmacy.

4 Q So let's stay with your Defendants' Exhibit 5,
5 which is your current CV. Although you've removed
6 the dates from that one, so keep the other one
7 handy if you need to look at the dates to answer my
8 question.

9 But you obtained a BS in pharmacy in 1983 from
10 the University of Illinois at Chicago, correct?

11 A Correct.

12 Q And that's a bachelor of science degree, right?

13 A Yes.

14 Q Did you attend college directly in the fall after
15 graduating from high school?

16 A Yes.

17 Q And where did you grow up?

18 A South side of Chicago.

19 Q You reviewed a master's in pharmacy from the
20 University of Illinois at Chicago in 1987; is that
21 right?

22 A Yes.

23 Q And we'll get your employment history in a minute.
24 But that was after you went to work for NABP,
25 correct?

1 A Right.

2 Q Why did you obtain your master's degree in 1987?

3 A It was something that I wanted to achieve and I was
4 asked by the faculty at the University of Illinois
5 Chicago College of Pharmacy to pursue a graduate
6 degree.

7 Q Did NABP pay for part of all of that degree
8 program?

9 A I can't recall.

10 Q You don't know one way or the other?

11 A I think if they did, it would have been part
12 payment, but I'm not sure.

13 Q Earlier, you just testified that you have an
14 honorary doctorate degree from the Oklahoma State
15 Board of Pharmacy, correct?

16 A No. It's --

17 Q Okay. I apologize. I didn't mean to put words in
18 your mouth.

19 A It's the legal designation of what a pharmacist in
20 Oklahoma is considered. In Illinois, pharmacists
21 who are licensed are considered registered
22 pharmacists. In Oklahoma they are considered
23 doctors of pharmacy, as the designation, the legal
24 designation. And so the Oklahoma Board of Pharmacy
25 issued me an honorary legal designation as a doctor

1 of pharmacy in Oklahoma. But not a degree.

2 Q And so the -- do pharmacists in Oklahoma refer to
3 themselves as doctors?

4 A Yes.

5 Q And so this may seem an odd question, but the
6 Oklahoma State Board of Pharmacy is not an
7 accredited educational institution, correct?

8 A Correct.

9 Q We discussed that you graduated with a BS in
10 pharmacy in 1983, correct?

11 A Yes.

12 Q And I believe you began working for NABP in 1985.

13 Is that also correct?

14 A Correct.

15 Q So you practiced as a pharmacist from 1983 to 1985;
16 is that right?

17 MR. ELSNER: Objection.

18 A I'm sorry. I heard practice of pharmacist and
19 then --

20 BY MS. FUMETON:

21 Q Let me ask a question a different way.

22 Did you ever practice as a pharmacist?

23 A Yes.

24 Q What years?

25 A 1983 to 2004.

1 Q So you went to work for NABP in 1985, correct?

2 A Correct.

3 Q Did you continue practicing as a pharmacist from
4 1985 to 2004 while you were working at NABP?

5 A Yes.

6 Q And so did you do that part-time?

7 A Yes.

8 Q Did you ever work full-time as a pharmacist?

9 A Yes.

10 Q For how many years?

11 A From 1983 through 1985.

12 Q So two years?

13 A Yes.

14 Q You didn't ever work in any capacity for one of the
15 defendant pharmacies in this action, correct?

16 MR. ELSNER: Objection.

17 A I'm trying to think of all the mergers that have
18 occurred. I worked for a large chain, but I
19 believe it's not one of the defendants.

20 BY MS. FUMETON:

21 Q What was the large chain?

22 A At the time it was Osco Drug. I believe now it's
23 Albertsons.

24 Q And what years was that?

25 A That was from 1981 through 2004.

1 Q And so you didn't graduate as a pharmacist or did
2 not get your degree in pharmacy until 1983,
3 correct?

4 A Correct.

5 Q So were you working as an intern from 1981 to 1983
6 part-time?

7 A No, I was working as a technician from 1981 to
8 1982. And then from 1982 to 1983, I was working as
9 a graduate pharmacist. From 1983 to 1984, I was a
10 staff pharmacist, and then from 1984 to 1985, I was
11 the pharmacist in charge.

12 Q And then did you continue to work at the same place
13 part-time after you took the position at NABP?

14 A No. I worked as a floater and worked at different
15 locations.

16 Q In what geographic area?

17 A Primarily initially the south side of Chicago and
18 then afterwards, the northwest suburbs of Illinois.

19 Q Did you ever work as a pharmacist in Ohio?

20 A No.

21 Q And so just so we're clear, to the best of your
22 knowledge, you've never worked for any of the
23 pharmacy defendants in this litigation, correct?

24 A Correct.

25 Q Do you hold any other professional certifications

1 or licenses?

2 A No.

3 Q Are you still a registered pharmacist today?

4 A Yes.

5 Q Have you ever had faced any disciplinary action --

6 A No.

7 Q -- as a pharmacist?

8 Any revocation of licenses?

9 A No.

10 Q Did you ever face any disciplinary action at NABP?

11 A No.

12 Q Have you ever been convicted of a crime other than
13 a misdemeanor traffic violation?

14 A No.

15 Q NABP is the National Association of Boards of
16 Pharmacy, correct?

17 A Correct.

18 Q And it's a 501(c) organization, right?

19 A 501(c)(3).

20 Q Thank you for that clarification.

21 How is it funded?

22 A Funding primarily comes from fees that the
23 pharmacists pay in order to take the national
24 licensure exam that's required by all the states,
25 and also for pharmacists to transfer their license

1 from one state to the other, for which NABP
2 maintains a disciplinary clearinghouse, and then
3 through some of its accreditation programs.

4 Q And as a 501(c)(3) organization, the NABP has to
5 submit certain tax returns that are publicly
6 available, correct?

7 MR. ELSNER: Objection.

8 A Yes.

9 BY MS. FUMETON:

10 Q And NABP has a foundation, correct?

11 A Correct.

12 Q It's called the NABP Foundation?

13 A Correct.

14 Q What is its purpose?

15 A The purpose is if there's a new concept, a new
16 innovation, a new program, it's begun in the
17 foundation, and the foundation then will test that
18 concept. If it seems like it's a program that's
19 going to benefit the states, then NABP will move it
20 into its operational side, which is the NABP.

21 Q And so is the foundation a not-for-profit
22 foundation?

23 A Both NABP and the foundation are 501(c)(3)
24 charitable and educational organizations.

25 Q And how is the NABP Foundation funded?

1 A It's funded by grants that are received, as well as
2 primarily through NABP.

3 Q You are currently a senior advisor to the NABP; is
4 that correct?

5 A Correct.

6 Q And what does it mean to be a senior advisor?

7 A If people have questions about what's happened in
8 the past or they would like my advice on current
9 issues or programs, then I'm available to assist
10 with that.

11 Q How long have you been a senior advisor?

12 A Since May when I retired, May 2021 -- or 2020.
13 May 2020.

14 Q About how many hours per week do you devote to
15 being a senior advisor to NABP?

16 A Anywhere between one to five hours.

17 Q Are you compensated in that role?

18 A No.

19 Q Do you have any type of in-kind benefits?

20 A Yes.

21 Q What are those benefits?

22 A For the next two years until 2022, I actually
23 receive a complimentary copy of the National
24 Association of Boards of Pharmacy compilation of
25 laws and regulations called NABPLAW, and also the

1 domain name for my company, Pharmacy Advisors, is
2 provided the .pharmacy domain for two years at no
3 cost.

4 Q When did you first get that domain name?

5 A Shortly after the company was founded sometime in
6 2020.

7 Q Was that before or after you left the NABP as the
8 executive director?

9 A I'm not exactly sure. I believe it was before I
10 left NABP.

11 Q And so why is NABP providing the pharmacy domain
12 name for your consulting company?

13 MR. ELSNER: Objection.

14 A After 35 years of building the company from a
15 seven-person staff with a budget of less than
16 100,000 to 160-person staff with a budget of
17 40 million, they felt that I would be a good
18 representative or ambassador for NABP and the work
19 I was doing afterwards. So they wanted to -- that
20 was an in-kind service that they appreciated and I
21 also requested.

22 BY MS. FUMETON:

23 Q Is there any other in-kind benefit that you
24 received from NABP?

25 A When I'm in the office, I'm entitled to the free

1 water and coffee that's provided to the employees.

2 Q Anything else?

3 A That's it.

4 Q What is the name of your consulting company?

5 A It's called Catizone, Luce & Menighan Pharmacy
6 Advisors.

7 Q And you believe that was founded in 2020; is that
8 right?

9 A Yes.

10 Q But you can't recall if it was founded before or
11 after you left NABP?

12 A It was -- yeah, I don't recall. I could check the
13 documents at some point, but I can't recall.

14 Q Given that they are funding your domain name for
15 NABP -- that NABP is funding your domain name for a
16 consulting company, do you think it was before you
17 left NABP?

18 MR. ELSNER: Objection.

19 A The funding is \$150 for the actual domain. That's
20 what NABP provides as an in-kind service. So
21 again, I'm not sure when it was funded. I think it
22 was prior to.

23 BY MS. FUMETON:

24 Q When did you know that the NABP was going to
25 support you in this regard?

1 MR. ELSNER: Objection.

2 A When I signed an agreement with -- after I left in
3 May.

4 BY MS. FUMETON:

5 Q Was that a severance agreement --

6 A No.

7 Q -- or retirement? Severance is probably the wrong
8 word. Was it like a retirement agreement?

9 MR. ELSNER: Objection.

10 A I don't know what the title was. It was -- it's
11 spelled out that NABP would provide me the domain
12 for \$150 each year and free access to NABPLAW at
13 \$800 per year, and in return for that, I would
14 provide advice as needed to the executive director
15 and staff for two years.

16 BY MS. FUMETON:

17 Q And that's a two-year agreement?

18 A Yes.

19 Q How are you compensated as a partner at CLM --
20 well, let me first ask, is your consulting -- let
21 me back up. Is your consulting company sometimes a
22 referred to as CLM?

23 A The last part?

24 Q CLM?

25 A Yes.

1 Q How are you compensated as a partner in CLM?

2 A There's a formula that we utilize based upon the
3 clients that the individual partners have
4 responsibility for, and the revenue is generated
5 and an algorithm is used to determine how much each
6 person has used.

7 Q Have you been retained in your individual capacity
8 by plaintiffs in this case or was CLM retained?

9 A No. I mean, I'm sorry. I've been -- our company
10 has been retained, but I'm the primary for this
11 case.

12 Q Plaintiffs retained CLM with you being the primary
13 person to work on it; is that correct?

14 MR. ELSNER: Objection.

15 A I don't know what the legalities is. They retained
16 me as a partner. It's my company, and that's where
17 the funding and everything goes.

18 BY MS. FUMETON:

19 Q I guess my question is, is your agreement with CLM
20 or is your agreement with you individually?

21 MR. ELSNER: Objection.

22 A The contract is with me individually, but payments
23 go to CLM.

24 BY MS. FUMETON:

25 Q Let's go back to your time with NABP. Prior to

1 being a senior advisor, you served as the executive
2 director of that organization, correct?

3 A Correct.

4 Q And you held that position for 35 years?

5 A I started in 1988, so approximately 33, 32 years.

6 Q So if we look at the second page of your current
7 CV, which is marked as Exhibit 5, prior to your
8 executive director role, you served as the NABP's
9 test and measurement director; is that right?

10 A Correct.

11 Q In that role you were responsible for the
12 administration of the NAPLEX examination; is that
13 right?

14 A Correct. And the other exams there as well.

15 Q And would that include the MPJE?

16 A Yes.

17 Q And did that exist back in 1985?

18 A No.

19 Q Okay. So I just asked if when you were in that
20 role you were responsible for the MPJE, and you
21 said yes.

22 A Sorry. I was confused. I thought you meant at my
23 time at NABP.

24 Q Okay. So thank you for that clarification. So
25 from 1985 to 1988, you were responsible for NAPLEX,

1 but when you were elevated to the executive
2 director of that organization, you continued to
3 have that responsibility of being responsible for
4 NAPLEX; is that accurate?

5 A And the other exams, yes.

6 Q And so in that role, you were responsible for the
7 MPJE, is that right?

8 A Correct. I was actually responsible for developing
9 the MPJE and its blueprint.

10 MR. ELSNER: Carmen, I'm sorry. Excuse me.
11 Carmen, if you could just give a second after the
12 question is asked so I can lodge an objection. I'm
13 afraid we're talking over each other, which makes
14 it very difficult for the stenographer.

15 Go ahead, Tara.

16 BY MS. FUMETON:

17 Q So we mentioned NAPLEX and MPJE. Are there other
18 competence assessment programs and activities that
19 you were responsible for?

20 A Yes.

21 Q What would those be?

22 A It's the pharmacy curriculum outcomes assessment
23 examination.

24 Q And what is that?

25 A That's an examination and an assessment tool that

1 measures how well a doctor of pharmacy program is
2 performing based upon its curriculum and provides
3 feedback to the faculty as well as to students.

4 Q And just briefly, what is NAPLEX?

5 A NAPLEX is the national licensure exam required by
6 all states that sets the minimum or entry level
7 competence that a pharmacist must demonstrate in
8 order to be licensed by the individual State Board
9 of Pharmacy.

10 Q And what is the MPJE?

11 A That is a multistate pharmacy jurisprudence
12 examination that has a very special algorithm so
13 that questions are asked of individuals, and the
14 correct answers pertain to that individual state or
15 the state where they are seeking licensure. So in
16 cases where a state law may be more restrictive
17 than federal law, state law takes precedence and
18 reverse, the federal law is more. So the candidate
19 knows exactly what they have -- what the laws in
20 the state or in the jurisdiction where they are
21 practicing.

22 Q And so the MPJE in layman's terms, it's focusing on
23 what the law and legal requirements are of the
24 pharmacist; is that right?

25 MR. ELSNER: Objection.

1 A Yes.

2 BY MS. FUMETON:

3 Q And what are competencies?

4 A Competencies, probably the best way to describe
5 them, are the blueprint for an examination. It
6 details what areas are going to be tested and what
7 the domain of knowledge is required to be known for
8 that particular area.

9 Q And did you develop the competencies for the MPJE?

10 A I was instrumental in developing the competencies
11 for NAPLEX, and I personally developed the
12 competencies for the MPJE.

13 Q And if I wanted to get my hands on those
14 competencies, how could I do that?

15 MR. ELSNER: Objection.

16 A All you'd need to do is go to www.nabp.pharmacy,
17 under programs, under examinations, and the MPJE
18 competency statements will be there as part of the
19 candidate board.

20 BY MS. FUMETON:

21 Q So for example, the competency 1.4.1, are you
22 familiar with that under the MPJE?

23 MR. ELSNER: Objection.

24 A If you put it up on --

25 BY MS. FUMETON:

1 Q I --

2 A I'm not -- I don't remember it offhand.

3 Q So if I said that it was responsibilities for
4 determining whether prescriptions or orders were
5 issued for a legitimate medical purpose and within
6 all applicable legal restrictions, would that ring
7 a bell?

8 MR. ELSNER: Objection.

9 A Sounds familiar, but I would prefer to actually see
10 it in writing so I could make sure it was what you
11 said.

12 BY MS. FUMETON:

13 Q Okay. And the MPJE asks pharmacists questions
14 about the competencies; is that right?

15 MR. ELSNER: Objection.

16 A It would ask --

17 BY MS. FUMETON:

18 Q Maybe I'm going about it incorrectly. I'm trying
19 to understand, sir. I've seen the competencies
20 listed there, and then the MPJE, though, is testing
21 pharmacists with respect to those various
22 competencies; is that right?

23 MR. ELSNER: Objection.

24 A Yeah. You know, I'll try and answer, but I'm not
25 following where you're going with the question.

1 The competencies are the entry-level requirements
2 that the individual states through MPJE have set,
3 and then the MPJE tests the pharmacist's knowledge
4 of those competencies.

5 BY MS. FUMETON:

6 Q Thank you. So if I wanted to see what the MPJE
7 tests were, how could I do that?

8 MR. ELSNER: Objection.

9 A You can only see the competencies because under the
10 standards for testing issued by the American
11 Psychological Association and standards that are
12 used for all high-stakes licensure exams, no
13 questions that are on the exam are actually
14 disclosed. But there are pretest and also
15 candidate guides that provide some sample questions
16 to candidates about what may appear on the
17 examination.

18 BY MS. FUMETON:

19 Q And in your view, it would be -- that's something
20 that I could access; is that right?

21 MR. ELSNER: Objection.

22 A You can access the practice exams that exist for
23 the other programs. There's not a practice exam
24 for MPJE yet.

25 BY MS. FUMETON:

1 Q As the executive director of NABP, you were
2 responsible for its executive governance, the
3 day-to-day operations, and development and
4 implementation of mission, vision, and strategic
5 plans; is that right?

6 A Yes.

7 Q How were you compensated at NABP?

8 A Paid a salary.

9 Q Do you know what your salary was in 2018?

10 MR. ELSNER: Objection.

11 A In 2000 what?

12 BY MS. FUMETON:

13 Q Let me back up.

14 What was your salary in 2020 when you left?

15 MR. ELSNER: Objection.

16 A Approximately \$600,000.

17 BY MS. FUMETON:

18 Q What was it in 2019?

19 MR. ELSNER: Objection.

20 A It was probably around the same, somewhere in the
21 ballpark between 500 and 700,000 over the last
22 three years I was there.

23 BY MS. FUMETON:

24 Q Will you take out what is in envelope 16? We're
25 going to mark that as Exhibit 8.

1 (Exhibit 8 was marked for identification.)

2 A Is that the 990?

3 Q Yes.

4 A Okay.

5 Q So for the record, it is -- appears to be a
6 2018 990 form, IRS form, for the National
7 Association of Boards of Pharmacy. And,
8 Mr. Catizone, I'll give you a minute to review the
9 document.

10 A I have it here.

11 Q Are you familiar with this document, what's been
12 marked Exhibit 8?

13 A Yes.

14 Q What is it?

15 A Exactly what you said. It's the 990 form for NABP.

16 Q And is it something that you prepare?

17 A No.

18 Q That's a bad question. I'll withdraw that
19 question.

20 This is the tax return that you signed on
21 behalf of the NABP; is that correct?

22 MR. ELSNER: Objection.

23 A Correct.

24 BY MS. FUMETON:

25 Q And in fact, if you'd look -- and I don't think

1 this version actually has a signature on it, but
2 you're listed down on the first page at the "Sign
3 Here" as "Carmen Catizone Secretary/Executive
4 Director," correct?

5 MS. FUMETON: I think -- Mike, can you hear
6 me?

7 Amy, can you hear me?

8 THE REPORTER: I believe we are frozen.
9 Do you want to go off the record for a moment?

10 MS. FUMETON: Yes, let's go off the record.

11 THE VIDEOGRAPHER: We're off the record.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: We're on the record.

14 BY MS. FUMETON:

15 Q Okay. Mr. Catizone, we just had a technical
16 difficulty, so I don't think you heard my last
17 question, which was, if you'd look at the first
18 page of Exhibit 8, you're listed down there as the
19 signatory, Carmen Catizone Secretary/Executive
20 Director, correct?

21 A Correct.

22 Q And not just for 2018, which is the particular
23 return that we're looking at on Exhibit 8, but in
24 your role at NABP as executive director, you had
25 the responsibility of ensuring that the information

1 that was contained in these tax returns that the
2 NABP was filing is truthful and accurate, correct?

3 MR. ELSNER: Objection.

4 A Correct.

5 BY MS. FUMETON:

6 Q Since 2010, NABP has reported in its tax returns
7 that you worked 23 hours per week; is that
8 accurate?

9 A I'm sorry I didn't hear the question.

10 Q Sure. Since 2010, NABP has reported in its tax
11 returns that you worked 23 hours per week; is that
12 accurate?

13 MR. ELSNER: Objection.

14 A From a payroll standpoint, yes.

15 BY MS. FUMETON:

16 Q And in fact, you can see that, if we turn to page 7
17 of this report, correct?

18 A Okay.

19 Q You're listed on line 13 --

20 A Yes.

21 Q -- as Carmen Catizone, correct?

22 A Correct.

23 Q And it says "Average hours per week." You're
24 listed at 23, correct?

25 A Correct.

1 Q And that's been the same as it has been since 2010,
2 right?

3 A Correct.

4 Q And your reportable compensation for 2018 was
5 \$846,873, correct?

6 A Correct.

7 Q So earlier you testified that your income was
8 approximately 500 to \$700,000 for the last few
9 years that you were there.

10 Is it a little bit higher than that?

11 MR. ELSNER: Objection.

12 A I had two contracts with NABP. So I thought the
13 question was how much was I compensated by NABP.
14 NABP compensated me between 5- and \$700. And I
15 worked for 27 hours for NABP. And then I worked
16 12 hours per week on payroll for the Foundation.
17 And the Foundation then paid me the difference
18 between the 5- to \$700 that I quoted and the
19 \$845,000. So I actually had two contracts with
20 NABP, two different payments.

21 BY MS. FUMETON:

22 Q I think you testified earlier that the funding for
23 the Foundation is basically coming from -- a
24 significant amount of it is coming from the NABP,
25 correct?

1 A Correct.

2 Q Okay. So if you combine your work for the
3 foundation and the NABP, you were receiving
4 approximately 800 -- well, approximately \$850,000
5 in 2018, correct?

6 A Correct.

7 Q And was that number higher in 2019?

8 MR. ELSNER: Objection.

9 A I believe I received an increase, so yes, it was
10 higher in 2019.

11 BY MS. FUMETON:

12 Q What was it in 2019?

13 A It might have been 5 percent higher, but I don't
14 recall.

15 Q No, I can't do the math in my head like that. So
16 is that about 900,000?

17 A To the best of my recollection, probably around
18 there.

19 Q Okay. And did you also get an increase for 2020?

20 A Yes. Approximately another 5 percent, I would say.

21 Q So going to about 950,000?

22 MR. ELSNER: Objection.

23 A Yes.

24 BY MS. FUMETON:

25 Q So from looking at this line, I just want to

1 understand how the structure works. You're giving
2 approximately in 2018, 850,000 of reportable income
3 from NABP. And then in column F, it refers to
4 "Estimated amount of other compensation from the
5 organization or related organizations" and there,
6 it's listed as 52,000.

7 Do you see that?

8 A Yes.

9 Q What's that referring to?

10 A That would have been a deferred income payment.
11 Oh, I'm sorry, that's actually the benefits for
12 healthcare and for retirement and pension.

13 Q That's the additional benefits that you received;
14 is that right?

15 A Yes.

16 Q When you were working for NABP as its executive
17 director, did you do consulting work on the side?

18 A No.

19 Q Was your only source of income from -- well, when
20 you became the executive director in 1985, did you
21 have any other -- I'm sorry. I have got my dates
22 wrong.

23 When you became the executive director in
24 1988, did you have any other income other than
25 through NABP?

1 A Yes.

2 Q That was your work as a pharmacist?

3 A Correct.

4 Q Any other income other than that?

5 A No.

6 Q And then you eventually stopped working as a
7 pharmacist on the side, correct?

8 A Correct.

9 Q At that point, did NABP and the Foundation become
10 your only source of income?

11 MR. ELSNER: Objection.

12 A Yes.

13 BY MS. FUMETON:

14 Q And so you never did any consulting work prior to
15 the formation of your current company in 2020; is
16 that right?

17 MR. ELSNER: Objection.

18 A Consulting work, but I was not compensated for it.

19 BY MS. FUMETON:

20 Q Okay. Were you compensated in any way, shape, or
21 form?

22 A No.

23 MR. ELSNER: Objection.

24 BY MS. FUMETON:

25 Q Looking back at Exhibit 8, in 2018, you were NABP's

1 highest paid employee, correct?

2 A Correct.

3 Q And in fact, the next highest paid employee is
4 Paul Jones, who received approximately \$280,000,
5 correct?

6 A Correct.

7 Q So you received drastically more money than he did,
8 right?

9 A I received more than he did. I'm not sure if it's
10 drastically or not.

11 Q Well, he worked more hours than you did. He worked
12 35 hours a week, correct?

13 MR. ELSNER: Objection.

14 A No.

15 BY MS. FUMETON:

16 Q Well, it's list on the tax return as 35
17 average hours per week, correct?

18 A Everyone at NABP works 35 hours per week. I work
19 23 for NABP and 12 for the Foundation; so we work
20 the same amount of hours.

21 Q So your foundation money is included in this;
22 your hours are not.

23 Is that what you're saying?

24 A Correct.

25 Q Well, you made more than twice -- two times what he

1 made, right?

2 MR. ELSNER: Objection.

3 A I would have to do the math. That's probably what
4 it is.

5 BY MS. FUMETON:

6 Q It's more than that, right?

7 MR. ELSNER: Objection.

8 A I don't have a calculator here. We could figure
9 out how many more times it is, but I don't have it.

10 BY MS. FUMETON:

11 Q You can't figure that out by just looking at those
12 two numbers?

13 MR. ELSNER: Objection.

14 A No.

15 BY MS. FUMETON:

16 Q Okay. How is your salary determined?

17 A Via board of directors of NABP, which is the
18 executive committee who are elected volunteers from
19 all of the states, set my salary for me.

20 Q And was that set on a yearly basis?

21 A It was contractual for three-year periods. And
22 then the committee had the ability to provide
23 increases as deemed appropriate.

24 Q Did NABP -- I think we've already established they
25 provided you with some additional benefits in the

1 amount of \$52,000 that you think is retirement and
2 other health benefits; is that right?

3 MR. ELSNER: Objection.

4 BY MS. FUMETON:

5 Q Did they provide any other benefits to you?

6 A Two other expenses. They provided me with a cell
7 phone. So that was about \$50 a month. And they
8 also provided me with funding to lease a vehicle,
9 and that was about \$400 per month.

10 Q And was that vehicle registered in NABP's name?

11 A Yes.

12 Q Do you have a Range Rover that was leased through
13 NABP?

14 MR. ELSNER: Objection.

15 A At one point, yes.

16 BY MS. FUMETON:

17 Q When did you have that?

18 A I can't recall the exact dates. It was maybe
19 five years past or something.

20 Q If we look on page -- I don't know what page this
21 is. It's -- it's the one with the travel on it.
22 So if you keep going, it's part IX. We can put it
23 up on the screen. When we get to that page -- it's
24 page 10. Sorry. Yeah, it's page 10. I don't know
25 if you have that. It might be easier. It's kind

1 of a small font. You can see it in front of you
2 more easily.

3 Are you on page 10, Mr. Catizone?

4 A Yes.

5 Q Okay. And so it has a line item of travel for NABP
6 of about 1.5 million.

7 Do you see that?

8 A Yes.

9 Q About what percentage of that was utilized by you?
10 Can you estimate that?

11 MR. ELSNER: Objection.

12 A Maybe 30,000.

13 BY MS. FUMETON:

14 Q And other than the vehicle and the cell phone that
15 we discussed, was there any other benefits that the
16 NABP, other than the retirement and the health
17 insurance that we discussed, that they provided
18 you?

19 A No, not that I can recall.

20 Q Your bio also notes, going back to your CV, that
21 you have worked as a liaison for the federal
22 government; is that right?

23 A Yes.

24 Q And what does that mean?

25 A As the spokesperson and representative for the

1 National Association of Boards of Pharmacy, I would
2 serve on various committees with the DEA, FDA, as
3 well as participate in meetings, discussions with
4 them and represent what the thoughts of the State
5 Board of Pharmacy and NABP were.

6 Q You worked closely with the DEA; is that right?

7 MR. ELSNER: Objection.

8 A Yes.

9 BY MS. FUMETON:

10 Q Do you consider the DEA as competent?

11 A Did you say -- did you ask if I thought the DEA was
12 competent?

13 MR. ELSNER: Objection.

14 A Yes.

15 BY MS. FUMETON:

16 Q Who specifically at DEA -- are there particular
17 individuals that you worked with more often than
18 not or I shouldn't say more often than not. Let me
19 rephrase the question.

20 Are there specific individuals of the DEA that
21 you often worked with?

22 MR. ELSNER: Objection.

23 A Primarily the diversion team, but I have worked
24 with each of the administrators from Michelle
25 Leonard through my tenure at NABP.

1 BY MS. FUMETON:

2 Q And what about the specific names, specific
3 individuals? I understand the team, but are there
4 specific individuals that you worked with closely?

5 MR. ELSNER: Objection.

6 A Over the years, whoever has been responsible for
7 diversion is the individual that I've worked most
8 closely with.

9 BY MS. FUMETON:

10 Q Can you give me some names?

11 A Sure. There was Joe Rannazzisi, there was others
12 that I can't recall right now, but they are
13 mentioned in some of the other documents that the
14 DEA released, and I worked with them as well.

15 Q So there are no other names that you can recall
16 right now?

17 A Correct.

18 Q Is it fair to say you worked primarily with
19 Mr. Rannazzisi?

20 MR. ELSNER: Objection.

21 A While he was in charge of diversion, Mr. Rannazzisi
22 and his team I worked with.

23 BY MS. FUMETON:

24 Q Have you stayed in contact with Mr. Rannazzisi?

25 A Very sparingly.

1 Q When is the last time you spoke with him?

2 A Probably about a year ago.

3 Q So NABP has a product called InterConnect; is that
4 right?

5 A Yes.

6 Q Can you describe what that is?

7 A Sure. Every state in the country, based upon
8 funding and support for NABP, has a prescription
9 drug-monitoring program. The InterConnect program
10 that was developed by NABP in about a six-month
11 time frame provides the interoperability between
12 all of those systems so that a pharmacist or
13 prescriber can query their individual PDMP and have
14 access to all the PDMPs across the country, all of
15 the states PDMP.

16 Q And is the InterConnect functional?

17 MR. ELSNER: Objection.

18 A I'm sorry. Did you say --

19 BY MS. FUMETON:

20 Q Is it operational? Does it work?

21 A Yes.

22 Q Okay. Is that a product that's a revenue stream
23 for NABP?

24 A Yes.

25 Q Is that something that NABP has made available to

1 the federal government?

2 A Did we make -- NABP was approached by the states to
3 develop InterConnect because the federal government
4 was unable to do so. And we've offered that
5 program to the federal government several times,
6 and the federal government has decided not to use
7 that program but instead use another program called
8 RxCheck.

9 Q Has InterConnect faced various road blocks?

10 MR. ELSNER: Objection.

11 A Yes.

12 BY MS. FUMETON:

13 Q What are those road blocks?

14 A The road blocks are political partisanship whereby
15 contractors are working and receiving grants for a
16 competing program wish to have that established,
17 and they've tried to shut down InterConnect, even
18 though InterConnect is operating at no cost to the
19 federal government, processes billions of records
20 each hour, each day, and provides operability
21 across all 50 states.

22 Q You were told that it would be very helpful to the
23 DEA, correct?

24 MR. ELSNER: Objection.

25 A No. The DEA and other law enforcement agencies

1 were advised that because of state laws and
2 requirements, the only way they could have access
3 to the PDMPs was through a subpoena or a case or a
4 court order.

5 BY MS. FUMETON:

6 Q But putting aside those road blocks, my point is
7 that you thought that would be something that would
8 be very helpful to the DEA; is that right?

9 MR. ELSNER: Objection.

10 A It's helpful -- more helpful to prescribers and
11 doctors and law enforcement, including the DEA,
12 that it would be a tool that could be used by them
13 as well.

14 BY MS. FUMETON:

15 Q Does NABP administer the VAWD program?

16 A Yes.

17 Q Can you briefly explain what that is?

18 A A VAWD program focuses on the integrity of products
19 that are distributed by wholesale distributors and
20 focuses on compliance with the Food, Drug and
21 Cosmetic Act, particularly those related to
22 wholesale distribution and pedigrees and other
23 requirements.

24 Q And VAWD actually accredited states wholesale
25 distributors of pharmaceuticals, correct?

1 MR. ELSNER: Objection.

2 A Correct.

3 BY MS. FUMETON:

4 Q And in fact, NABP is accredited from the defendants
5 in this litigation, correct?

6 MR. ELSNER: Objection.

7 A I believe the wholesale distribution aspects of the
8 defendants, yes.

9 BY MS. FUMETON:

10 Q And in doing so, in accrediting the defendants and
11 their wholesale distribution activities, the NABP
12 looks at their policies and procedures to ensure
13 that they comply with the Controlled Substances
14 Act, correct?

15 MR. ELSNER: Objection.

16 A The primary focus is the Food, Drug and Cosmetic
17 Act, and then there's a tertiary review of whether
18 or not they're compliant with their Controlled
19 Substances Act.

20 BY MS. FUMETON:

21 Q So they do look to see whether they are in
22 compliance when doing their accreditation, correct?

23 MR. ELSNER: Objection.

24 A They look at their policies and procedures, and
25 then they may pull an invoice to do a random audit.

1 BY MS. FUMETON:

2 Q Okay. And so at least from a policies and
3 procedures standpoint, if the VAWD is giving
4 accreditation, it is concluding that their policies
5 and procedures are compliant with the CSA, correct?

6 MR. ELSNER: Objection.

7 A Along the distribution lines, yes.

8 BY MS. FUMETON:

9 Q When you left the executive director position at
10 NABP in May of 2020, did you receive a type of
11 severance or retirement package?

12 A I was an employee of the association, and so I
13 received a pension and 401(k) like the other
14 employees did, yes.

15 Q And was that something you had already paid into?

16 A Yes.

17 Q Other than the compensation benefits that we've
18 already discussed, did you ever receive any other
19 remuneration from the NABP, any other benefits?

20 A Yes.

21 Q What are those?

22 A Whenever there was an increase or bonus provided to
23 me, I deposited that money into a deferred income
24 account so that I would not then take that money
25 for that year, and then at the end of my time with

1 NABP, I withdrew the monies from that deferred
2 compensation fund.

3 Q How much was that in deferred compensation when you
4 retired from the NABP?

5 MR. ELSNER: Objection.

6 A I believe about 2.2 million of which I received
7 1.5 million.

8 BY MS. FUMETON:

9 Q Why did you receive 1.5 and not the rest?

10 MR. ELSNER: Objection.

11 A There's a thing in the United States called taxes.

12 BY MS. FUMETON:

13 Q I see. So you received that, but then you had to
14 pay taxes on it?

15 A Correct. Because it counted as compensation, so
16 technically, the answer did I receive any other
17 compensation, I answered it correctly. This was
18 part of compensation that I chose to defer.

19 Q On your CV, does it accurately list all of your
20 professional memberships?

21 A To the best of my ability, but there may be some on
22 there that aren't included. I'm not sure.

23 Q Do you receive compensation for any of them?

24 A No.

25 Q And you also on your CV are listed as instructor,

1 Drug Enforcement Administration Training Academy
2 from 2008 to the present, correct?

3 A Correct.

4 Q What does that entail?

5 A Up until about five years ago, I actually taught a
6 course at Quantico for DEA diversion investigators
7 explaining to them what is the practice of
8 pharmacy, what boards of pharmacy are, and then
9 what red flags were that were identified by boards
10 of pharmacy, and then also the disciplinary actions
11 that state boards of pharmacy can take or not take.

12 Q And were you compensated for that?

13 A No.

14 Q And why did you stop doing that five years ago?

15 A They just didn't ask me to present it anymore. I'm
16 not sure why.

17 Q You don't list any scientific or academic research
18 on your CV.

19 Is that fair to say?

20 A There is some on there.

21 Q And what are you referring to specifically?

22 A If you can turn to the publications, one of my
23 publications has actually been the sentinel
24 quotation for clinical pharmacy in the United
25 States and the basis for additional research. So

1 I've done that type of research, that research as
2 well.

3 Q And which one are you specifically referring to?

4 MR. ELSNER: Objection.

5 A It's the citation, I'm sorry, there's no
6 page numbers on the résumé, but it begins with
7 "Hatoum, HT, Catizone, C, Hutchinson, RA,
8 Bibliography: An Eleven-Year Review of Pharmacy
9 Literature: Documentation of the Value and
10 Acceptance of Clinical Pharmacy." All of the
11 passing score studies that are also listed there
12 for the NAPLEX and others were actually academic
13 and research. And so there are a number of
14 citations there.

15 BY MS. FUMETON:

16 Q You're not an expert in the field of pain
17 management, correct?

18 A Correct.

19 Q Or the use of opioid pain medications for the
20 clinical treatment of pain, correct?

21 MR. ELSNER: Objection.

22 A Correct.

23 BY MS. FUMETON:

24 Q And you would agree that you're not an expert on
25 opioids in particular, correct?

1 MR. ELSNER: Objection.

2 A Correct.

3 BY MS. FUMETON:

4 Q I'd like to briefly turn now to your experience
5 serving as an expert witness. And I know that you
6 have listed several different litigation matters
7 and other consulting activity in your CV. If we
8 actually look at your report at pages 5 and 7 --
9 and you are happy to reference it if you want. You
10 list 25 cases in which you served as an expert
11 witness; is that accurate, approximately?

12 MR. ELSNER: I'm sorry, Tara. What are you
13 referring to, his CV or his report?

14 MS. FUMETON: The report, pages 5 and 7 of his
15 report. Exhibit 2.

16 A Those are listed on pages 5 to 7, yes.

17 BY MS. FUMETON:

18 Q Okay. And the cases cover about the last 15 years;
19 is that right?

20 A Correct.

21 Q And approximately how many times did you serve as
22 an expert witness prior to 2006 in any litigation?

23 MR. ELSNER: Objection.

24 A In litigation, not at all.

25 (Stenographer requested clarification.)

1 A Not at all.

2 BY MS. FUMETON:

3 Q Earlier you mentioned that your fees can range from
4 \$200 to \$800 for expert work in opioid-related
5 litigation. I guess my first question is, of the
6 litigation matters listed here, which, if any, do
7 you consider to be opioid related?

8 MR. ELSNER: Objection.

9 A On page 5, third, Trial: Expert witness,
10 distribution of controlled substances; the next
11 one, distribution of controlled substance; Trial:
12 Expert, Northern District of California,
13 distribution of controlled substances; Trial:
14 Expert, Northern District U.S. versus Michael
15 Arnold Jeffrey; Trial: Expert witness -- on the
16 next page -- Michigan versus Fabode, controlled
17 substances; Trial: Expert witness, Office Southern
18 District New York, controlled substances; Northern
19 District of Ohio, controlled substances; Office
20 San Francisco Division, Napoli, controlled
21 substances; Trial: Expert, Michael Arnold and
22 Jeffrey Herholz, controlled substances; Baldwin
23 Ihenacho, distribution of prescription drugs; then
24 Western District, Rostie, distribution of
25 controlled substances; then Trial: Witness, the

1 last there, Eastern District of New York,
2 distribution and possession of oxycodone and
3 hydrocodone.

4 Moving to page 7, illegal distribution of
5 prescription drugs, Office District of Minnesota,
6 U.S. versus Christopher Smith; Matter of United
7 Prescription Services, illegal distribution of
8 controlled substances; Trinity Healthcare, illegal
9 distribution of controlled substances.

10 BY MS. FUMETON:

11 Q So you're referencing all that being opioid
12 litigation because they all involved in part some
13 opioids?

14 A Even though the focus has been maybe internet
15 pharmacy, there has been some tangential relation
16 to opioids in most of the hearings in cases.

17 Q So when you were talking about that they involve
18 opioids, this is tangential relationship to
19 opioids; is that right?

20 MR. ELSNER: Objection.

21 A The cases I just cited, those were very specific to
22 opioids. The internet cases that would have been
23 tangential to opioids.

24 BY MS. FUMETON:

25 Q Okay. And in fact, some of the cases that you list

1 on page 5 are actually the same cases listed on
2 page 6, though, right? It's first just what's
3 happening at the DEA hearings and then it's going
4 on to proceed to other litigation?

5 A If so, that might be. No, I think -- yes, they
6 would be -- when I was the expert witness, I
7 delineated that, and then the second, this is where
8 I've actually provided testimony. So in the first
9 part --

10 Q Okay.

11 A -- is where I may have provided a report and may
12 not have testified.

13 Q Which is the first part that now you're referring
14 to?

15 A Page 5. Page 5 would have been recognized - I'm
16 sorry. If there's duplication, then that one would
17 have been a mistake.

18 Q Well, is there duplication? I mean, just asked the
19 question. You would know.

20 Is there duplication? I just looked at the
21 first five on page 5. They seem to match the first
22 five on page 6 as far as the names are concerned.

23 MR. ELSNER: Objection.

24 A I don't think there was duplication. I thought you
25 said that there was. So I don't think there's

1 duplication.

2 BY MS. FUMETON:

3 Q So if you look at the first one, it talks about
4 U.S. v. Abiodun Fabode on page 5. And then on the
5 second page, it talks about U.S. v. Abiodun Fabode,
6 right?

7 A Yes.

8 Q Are those the same matters?

9 A Yes. So --

10 Q If you look at the second one on page 5, it's the
11 same as the second one on page 6, correct?

12 A Yes. So there was some duplication in the trials
13 and hearings.

14 Q And which of these were you paid \$800 for -- an
15 hour, do you recall?

16 A I'm sorry?

17 Q Which of these were you paid \$800 an hour for, do
18 you recall?

19 MR. ELSNER: Objection.

20 A None of these cases.

21 BY MS. FUMETON:

22 Q None of the ones that are listed here?

23 A Correct.

24 Q Which litigation matters have you been paid \$800
25 per hour on?

1 A Those were with private clients that weren't
2 actually -- they did not go to trial. I actually
3 provided advice and served as a litigation
4 consultant for them.

5 Q So that's in a consulting role, not as a testifying
6 expert; is that right?

7 A Correct.

8 Q So that was not involving opioid litigation,
9 correct?

10 A It was involving opioids and possible opioid
11 litigation.

12 Q Okay. Did you provide an expert report for all of
13 these cases listed on page 5 through 7?

14 A The expert reports that I provided, I would have to
15 double-check to see. I can't recall.

16 Q Would you still -- if you had provided an expert
17 report, would you have possession of it or a way to
18 access it?

19 A Whatever expert report I have, I turned over to
20 legal counsel.

21 Q Okay. Is that same with deposition transcripts?

22 A Yes.

23 Q And trial transcripts?

24 A I'm sorry, what was that?

25 Q Trial transcripts?

1 A Just, like, my deposition transcripts or trial
2 transcripts, yes.

3 Q Has your testimony as an expert ever been excluded
4 by a Court?

5 A No.

6 Q Has a Court ever found you not qualified to testify
7 as an expert?

8 A No.

9 Q In all of the matters listed on pages 5 through 7
10 of your report, you were an expert on behalf of the
11 United States Government; is that right?

12 A Yes.

13 Q And the Department of Justice, in fact, on behalf
14 of the United States, hired you to serve as an
15 expert in these cases, correct?

16 A Yes.

17 Q You didn't testify on behalf of any defendant in
18 any of those cases, correct?

19 A Correct.

20 Q Have you ever served as an expert witness on
21 litigation on behalf of any party other than the
22 United States or now the plaintiffs in this
23 litigation?

24 A No.

25 Q So you've never provided expert testimony on behalf

1 of a retail chain pharmacy, correct?

2 A I provided testimony before boards of pharmacy on
3 behalf of a retail pharmacy or a chain pharmacy in
4 regard to whether or not a particular law, rule,
5 regulation or decision was actually something that
6 NABP and I considered fair or not. But never in a
7 litigated matter or a hearing.

8 Q And none in which you were being compensated,
9 correct?

10 A I'm sorry?

11 Q And no matter in which you were being compensated,
12 correct?

13 MR. ELSNER: Objection.

14 A Correct.

15 MS. FUMETON: Why don't we take a short break.
16 I might have just a few more questions before I
17 pass the witness on to another defendant.

18 MR. ELSNER: Shall we say ten minutes?

19 MS. FUMETON: Ten minutes would be great.

20 THE VIDEOGRAPHER: Off the record.

21 (A recess was taken.)

22 THE VIDEOGRAPHER: We're on the record.

23 BY MS. FUMETON:

24 Q Mr. Catizone, I want to ask you about your
25 familiarity with United States v. Walmart, which is

1 the case that's currently pending in the District
2 of Delaware.

3 You're familiar with that case, correct?

4 MR. ELSNER: Objection.

5 A Yes.

6 BY MS. FUMETON:

7 Q You cite it in your report, correct?

8 A Yes.

9 Q Has anyone asked you to review or draft any claims
10 or documents relating to that litigation?

11 MR. ELSNER: Objection. To the extent you're
12 asking him whether he has performed any consulting
13 services for any other defendant, including the
14 Department of Justice, that's not an appropriate
15 inquiry.

16 MS. FUMETON: Well, the Department of Justice
17 isn't a defendant.

18 MR. ELSNER: I said or the Department of
19 Justice or anyone else.

20 If he's performing a consulting role with
21 respect to any other entity or a defendant or
22 plaintiff in any kind of litigation, then that's
23 not an appropriate area of inquiry.

24 MS. FUMETON: Well, first of all, I disagree,
25 and I think I can set the foundation for it because

1 he cites to the litigation and, in fact, the
2 complaint in his expert report as something he is
3 relying upon. So if he was involved with it in any
4 way, I think I'm entitled to know that.

5 MR. ELSNER: No, you're not entitled to know
6 what consulting work he's done with the Department
7 of Justice. If you want to ask him about the
8 allegations against Walmart and what he's relied
9 upon in his report with respect to that, that's
10 fair game. But whatever consulting work he's done
11 for the Department of Justice, you're not entitled
12 to ask him that question.

13 MS. FUMETON: Well, let's see where we go, and
14 if you want to instruct him not to answer, we'll
15 see what happens.

16 BY MS. FUMETON:

17 Q Mr. Catizone, on page 86 of your report -- if you
18 need it, you can reference it -- you rely on
19 allegations made in the United States complaint
20 against Walmart for forming your opinions in this
21 case, right?

22 A Yes.

23 Q Okay. And going back to my question, you're
24 involved in that litigation, correct?

25 MR. ELSNER: Objection. You can answer yes or

1 no.

2 A No.

3 BY MS. FUMETON:

4 Q You have filed a declaration in that litigation,
5 correct?

6 A Yes.

7 Q Okay. So let's walk through what your involvement
8 is, then, and I'll ask my question again.

9 Has anyone asked you to review or draft any
10 pleadings related to that litigation?

11 MR. ELSNER: Objection. If it was performed
12 as part of a consulting role, then you cannot
13 reveal the contents of the work that you did as a
14 consultant and nontestifying expert witness.

15 MS. FUMETON: He can testify about anything
16 that's been made publicly available, including, if
17 he submitted, for example, declarations in
18 litigation.

19 MR. ELSNER: If you want to show him the
20 declaration or show him something that's been
21 publicly made available that shows what work he
22 did, then you can do that. But you cannot probe
23 into what work he did as a nontestifying consulting
24 expert with respect to any litigation, including
25 this litigation that you're referring to with

1 respect to the Department of Justice.

2 BY MS. FUMETON:

3 Q You referenced the United States complaint and the
4 allegations made therein against Walmart in your
5 report, correct?

6 A Yes.

7 Q Have you ever had any conversations with the DOJ
8 about those allegations?

9 MR. ELSNER: Objection. You can answer to
10 the -- you can't. If you're serving as a -- I
11 don't know the answer to this question. So if
12 you're serving as a consulting expert to the
13 Department of Justice and -- then you cannot
14 disclose the content of those communications or
15 what they asked you to do on their behalf. If you
16 can answer the question --

17 (Simultaneous conversation.)

18 MR. ELSNER: Otherwise, then you're free to do
19 so.

20 A So I think I can answer the question. So I believe
21 in April the Department of Justice participated in
22 a phone call with the executive directors of the
23 state boards of pharmacy, and on that phone call,
24 the Department of Justice asked for an opportunity
25 to speak with the individual directors of the

1 boards of pharmacy to talk with them about the
2 litigation and what DOJ litigation involved.

3 Beyond that, I have not had any conversations
4 beyond that call with anyone from DOJ.

5 BY MS. FUMETON:

6 Q And that was in April of 2021; is that correct?

7 A Correct.

8 Q How long did that phone call last?

9 A The actual part of DOJ was about 15 minutes.

10 Q And you were not an executive director of a State
11 Board of Pharmacy, correct?

12 A Correct.

13 Q Why were you participating in that phone call?

14 A In my role as senior advisor, I participant in
15 those calls, again, as I said, to provide
16 background or clarity to -- I'm sorry. The name
17 Graeme Bush just appeared on my screen. I don't --

18 Q He's counsel for CVS in this litigation.

19 A Okay. But I've lost you. There you are. So I was
20 there as a senior advisor to the NABP staff.

21 Q And what was the response from the executive
22 directors that you recall?

23 A No one commented. They simply listened to the
24 comments by the DOJ, and that was the extent of it.

25 Q So going back to my first question about the

1 complaint that you reference in your report, did
2 you review that complaint before it was filed in
3 any way?

4 A No.

5 Q Are you aware that NABP filed an amicus brief in
6 connection with that litigation?

7 A Yes.

8 Q Were you involved in that decision by the NABP to
9 file an amicus brief in connection with that
10 litigation?

11 A No, I was not.

12 Q When did you learn that they had filed an amicus
13 brief?

14 A What I've learned was that Walmart raised an
15 objection to NABP filing an amicus brief, and I
16 don't recall when that date was. But I don't know
17 when NABP actually filed the brief or not, if it
18 was actually allowed or not.

19 Q If I said it was filed in May of -- May 17, 2021,
20 does that refresh your recollection?

21 A It's not a recollection. I didn't know when it was
22 filed at all, so...

23 Q Okay. When do you first recall having a discussion
24 with anybody about NABP filing an amicus brief in
25 that litigation?

1 MR. ELSNER: Objection.

2 A Probably in April, after NACDS filed an amicus
3 brief in that case.

4 BY MS. FUMETON:

5 Q And what were those discussions?

6 A I read on my own the NACDS amicus brief, and I
7 could not believe that NACDS undermined the
8 authority and the scope of practice for pharmacists
9 in their amicus brief.

10 And I felt that -- I spoke with the executive
11 director of NABP and thought it would be in NABP's
12 best interest and the state's best interest to file
13 an amicus brief, like NABP did in the Walmart
14 versus Apple case to affirm that the pharmacist has
15 very specific responsibilities in regard to drug
16 utilization reviews, scope of authority, and red
17 flags and corresponding responsibility.

18 Q So you went to the NABP and suggested that they
19 file an amicus brief; is that accurate?

20 MR. ELSNER: Objection.

21 BY MS. FUMETON:

22 Q Did you facilitate any discussion between the NABP
23 and anyone associated with the United States or the
24 DOJ with respect to filing that amicus brief?

25 MR. ELSNER: Objection.

1 A I set up a conversation to talk about what DOJ was
2 going to talk about with the states on phone calls,
3 and I believe the amicus brief then was also one of
4 the topics that DOJ wanted to talk with NABP about.

5 BY MS. FUMETON:

6 Q Who did you set that conversation up with?

7 A I worked simply through Lindsay Graham, and I don't
8 know who then set those calls up or how those calls
9 were set up, because I did not participate in the
10 subsequent calls with NABP.

11 Q Who is Lindsay Graham?

12 A She's an attorney for the U.S. Department of
13 Justice. I believe that's her name.

14 Q And so did you reach out to her or did she reach
15 out to you?

16 MR. ELSNER: Objection.

17 A As part of the follow-up to the call with the
18 states, I reached out to them to ask what the next
19 steps were and if they needed any other assistance,
20 and that's when a request was made to have a call
21 with NABP to talk about what they were going to
22 talk with the states about, and then I believe
23 that's when the amicus brief was also discussed,
24 but I can't say for certain.

25 BY MS. FUMETON:

1 Q So I'm confused about your timeline, because you
2 say as a follow-up to the call with the states, you
3 reached out to them and asked them what next steps
4 were needed, and that's when a request was made to
5 have a call with the states. That's what you just
6 testified to.

7 So what was the order that happened here?

8 A No, it was a follow-up --

9 MR. ELSNER: I have to lodge an objection to
10 this. It's unclear to me whether any of this work
11 was being performed in the context of a consultancy
12 relationship with the DOJ. And I need to -- I
13 think I need to go off the record and confirm that,
14 and then I can properly provide objections.

15 I'm concerned that we may be tiptoeing into
16 areas that are covered by consultancy agreement.
17 We may not. I don't know the answer. But I need
18 to know the answer to that first before we can go
19 any further. So I'd request that we take a brief
20 two-minute break just so I can understand the
21 answer to that question so I can lodge my
22 objections.

23 BY MS. FUMETON:

24 Q Well, before we go off the record, Mr. Catizone, do
25 you understand whether or not you had a consulting

1 agreement with the United States?

2 MR. ELSNER: Objection. I need to ask him
3 this question, and I need -- look, his
4 understanding of what a consultancy role is and
5 what ours is as counsel and what's protected and
6 what's not protected by disclosure is very
7 different. So I need to be able to understand that
8 and then have a conversation with him. It will not
9 take long.

10 SPECIAL MASTER COHEN: This is David Cohen. I
11 think it is fair that Mr. Elsner and Mr. Catizone
12 have a brief conversation to make sure they are on
13 the same page, and, frankly, I think it might help
14 if I listen in. I'm not going to ask any
15 questions, just hear what it is, because I've been
16 wondering whether and when I might be asked to rule
17 on this, and I was thinking that if I am asked to
18 rule on it, I'm going to need to know what Mike now
19 wants to ask Carmen.

20 So why don't we take a quick break, and I'm
21 going to ask the video -- whoever is running the
22 meeting to set up a room so that I can also
23 participate in that conversation.

24 MS. FUMETON: Okay.

25 THE VIDEOGRAPHER: We're off the record.

1 (A recess was taken.)

2 THE VIDEOGRAPHER: We're on the record.

3 BY MS. FUMETON:

4 Q Okay. Mr. Catizone, you have a contract with the
5 Department of Justice in connection with the
6 United States v. Walmart matter in which you're
7 getting paid, correct?

8 A Yes.

9 Q And is that relationship one of a consulting expert
10 or a testifying expert?

11 A Consulting expert.

12 Q So I want you to pull out what's tabbed 8 and 9 in
13 your binder. And then, if you can hold Tab 10,
14 pull that out while you're down there. Don't open
15 that one yet up, but please open Tab 8 and 9. And
16 that's going to be marked collectively as
17 Exhibit 9. And for the record, it's the
18 Declaration of Carmen Catizone dated May 25th,
19 2021, with the attached exhibits in the
20 United States v. Walmart matter pending in the
21 District of Delaware.

22 A Okay.

23 Q Mr. Catizone, let me know when you have that.

24 Have you been able to open both of those
25 documents?

1 A Yes, I have.

2 (Exhibit 9 was marked for identification.)

3 Q Mr. Catizone, you're familiar with what's been
4 marked as Defendant Exhibit 9, correct?

5 A Yes, I am.

6 Q And it's a declaration that you provided on
7 May 25th, 2021, in the United States v. Walmart
8 matter, correct?

9 A Correct.

10 Q If we look at the first page of the affidavit,
11 paragraph 34, you state? "Following my retirement
12 as executive director, I remained an employee of
13 the Association until December 21st, 2020."

14 Do you see that?

15 A Yes.

16 Q You say: "I still provide some services to NABP as
17 an independent contractor." Correct?

18 A Yes.

19 Q What type of services do you provide as an
20 independent contractor?

21 A I am the senior advisor to NABP.

22 Q So that's just referring to your senior advisor
23 position?

24 A Yes, ma'am.

25 Q And that's an unpaid position; that's your

1 testimony?

2 A It was unpaid but there was in-kind services that
3 we discussed, the domain name, access to NABPLAW.

4 Q Okay. And attached to your declaration, you filed
5 two contracts as Exhibit A and Exhibit B, correct?

6 A Yes.

7 Q I want you to look at Exhibit A first.

8 A I'm sorry. Is Exhibit A in the Tab 9 folder?

9 Q So what you should have in front of you is, yes,
10 Tab 8 and Tab 9, Tab 9 being the declaration, Tab 9
11 being the exhibits, has been marked as a composite
12 exhibit of Defendant Exhibit 9 which is both your
13 declaration and the two supporting exhibits that
14 you filed in the Walmart v. DOJ litigation,
15 correct?

16 So are you looking at Exhibit A now? We can
17 turn to that page.

18 A Yes, I am.

19 Q So this is a contract that's dated August 25th,
20 2020, correct?

21 A Yes.

22 Q And you entered into this contract on behalf of the
23 NABP, correct?

24 A No, I entered into it personally.

25 Q So let's look at paragraph 4 of your declaration.

1 You say: "On August 25th, 2020, after I retired as
2 the Association's executive director but while I
3 was still an employee of the Association, I entered
4 into a consulting contract with the United States
5 Attorney's Office for the Eastern District of North
6 Carolina. The contract named the Association as
7 the contracting party. A copy of the contract is
8 attached to this declaration as Exhibit A."

9 And that's what's attached in what's been
10 marked as Exhibit 9 in this case, correct?

11 A Correct.

12 Q And so even though you're the person who the
13 consulting agreement was with, you entered into it
14 under the name of the NABP, correct?

15 MR. ELSNER: Objection.

16 A Yes.

17 BY MS. FUMETON:

18 Q And the total award for this contract was \$10,000,
19 correct?

20 MR. ELSNER: Objection.

21 A Compensation paid to NABP was \$2,000.

22 BY MS. FUMETON:

23 Q So the total amount of this contract, though, is
24 \$10,000, correct?

25 A The amount that --

1 Q To --

2 A The amount that was budgeted by DOJ was \$10,000,
3 not what was actually compensated.

4 Q So this is a contract that you entered into for
5 your consulting arrangement with the DOJ. How much
6 money did you receive for it?

7 MR. ELSNER: Objection.

8 A I didn't receive anything.

9 BY MS. FUMETON:

10 Q Did you receive any money through the NABP as part
11 of this agreement?

12 A No.

13 Q So NABP was paid for your services by the DOJ in
14 August of 2020 after you had left?

15 MR. ELSNER: Objection.

16 A Yes. So prior to this time, whenever I worked on
17 cases for the DOJ or the DEA, I received no
18 compensation whatsoever. I did that on free time
19 or time provided by NABP. If there was ever any
20 compensation, the compensation went to NABP. And
21 with this contract, since I was on contract with
22 NABP through December of 2020, any contracts that
23 were begun prior to that time, the compensation
24 went directly to NABP and not to me personally.

25 BY MS. FUMETON:

1 Q So let me be clear. In all the different testimony
2 that you gave earlier today, where you said that
3 you would offer testimony on behalf of the DEA and
4 that you were not being paid for it, in fact, the
5 NABP was being paid for it, and you were receiving
6 a large salary from the NABP, correct?

7 MR. ELSNER: Objection.

8 A I was receiving a fair salary for the amount of
9 time and work I put in.

10 BY MS. FUMETON:

11 Q And the NABP was being paid by the DOJ for your
12 testimony, correct?

13 MR. ELSNER: Objection.

14 A Only beginning in 2019-2020. All my prior cases,
15 there was no compensation paid to me or NABP.

16 BY MS. FUMETON:

17 Q So starting in 2019, you started -- NABP started
18 receiving compensation from the DOJ for you to
19 provide testimony to -- for the DOJ; is that
20 correct?

21 MR. ELSNER: Objection.

22 A Yes.

23 BY MS. FUMETON:

24 Q And the NABP at the time was giving you regularly
25 significant increases in your salary, correct?

1 MR. ELSNER: Objection.

2 A The increases were 5 percent. I'm not sure if
3 that's significant or not.

4 BY MS. FUMETON:

5 Q \$50,000 a year at least, correct?

6 MR. ELSNER: Objection.

7 A Whatever the math would be, but 5 percent was the
8 standard increase that all employees at NABP got
9 that performed well.

10 BY MS. FUMETON:

11 Q Well, you were making almost a million dollars for
12 the NABP while the DOJ was paying NABP for your
13 testimony in its cases, correct?

14 MR. ELSNER: Objection.

15 A Yes.

16 BY MS. FUMETON:

17 Q If we go to Exhibit B, your declaration, which is
18 Exhibit -- in Exhibit 9. So the second contract,
19 correct?

20 A Yes.

21 Q And this contract is specifically in your name,
22 Carmen Catizone, correct?

23 A Yes.

24 Q And it's for expert services in United States v.
25 Walmart case, correct?

1 A Yes.

2 Q And the total award amount is \$19,743, correct?

3 A That's the total budgeted amount.

4 Q So that's the total amount that you could receive
5 in that year for your services to the DOJ, correct?

6 MR. ELSNER: Objection.

7 A Correct.

8 BY MS. FUMETON:

9 Q And so both the contracts in Exhibit A and
10 Exhibit B relate to your work for the DOJ in the
11 United States v. Walmart case, correct?

12 A My understanding is that Exhibit A was a separate
13 case based in North Carolina and Exhibit B is the
14 case that's now pending.

15 Q So to your knowledge, you do not think that the
16 work in Exhibit A, the consulting work you're doing
17 on behalf of the DOJ related to the United States
18 v. Walmart case; is that right?

19 MR. ELSNER: Objection.

20 A Yes, that's my understanding.

21 BY MS. FUMETON:

22 Q Do you know if NABP has a different understanding?

23 A I'm sorry. I didn't hear the question.

24 Q Do you know if the NABP has a different
25 understanding?

1 MR. ELSNER: Objection.

2 A I do not.

3 BY MS. FUMETON:

4 Q Are you aware that the NABP has submitted a notice
5 of clarification to the Court in Delaware?

6 MR. ELSNER: Objection.

7 A I'm aware that they submitted something, but I've
8 not seen that clarification or that document.

9 BY MS. FUMETON:

10 Q Let's mark that as -- that's in your Tab 10. We're
11 going to mark it as Exhibit 10.

12 (Exhibit 10 was marked for identification.)

13 A Okay. I have it.

14 BY MS. FUMETON:

15 Q Okay. Were you aware -- can we take this down for
16 one -- well, were you aware that the NABP was going
17 to file a notice of clarification?

18 A No.

19 MR. ELSNER: Objection.

20 BY MS. FUMETON:

21 Q Did you have any conversations with anybody at NABP
22 relating to the notice of clarification?

23 A To this clarification, no.

24 Q To any clarification?

25 A No.

1 Q You were the only person providing work under the
2 contract in Exhibit A, correct?

3 MR. ELSNER: Objection.

4 A Correct.

5 BY MS. FUMETON:

6 Q And did you -- is it your testimony that you didn't
7 understand what your consulting work was being used
8 for?

9 MR. ELSNER: Objection.

10 A It's my testimony that based upon prior cases that
11 I had worked on, that I was working on a case that
12 was based in North Carolina for Walmart pharmacies
13 based in the North Carolina area. And that was my
14 complete understanding of the work.

15 BY MS. FUMETON:

16 Q Are you aware that the United States informed NABP
17 after the filing of the NABP reply to which your
18 declaration was attached, that in fact, that
19 consulting work you performed was being used for
20 purposes of the United States case against Walmart
21 pending in the District of Delaware?

22 A I'm aware now as I read that in the clarification,
23 but I was not aware of that prior to this time.

24 Q So your prior declaration that was submitted in
25 this court was false, right?

1 MR. ELSNER: Objection; misstates and
2 mischaracterizes his testimony.

3 A No, it was not.

4 BY MS. FUMETON:

5 Q So I'm just trying to figure out what the truth is.
6 The true is that the work that you performed under
7 the contract at Exhibit A of what's been marked as
8 Exhibit 8 in this case was, in fact, being used for
9 purposes of the litigation pending against my
10 client, Walmart, correct?

11 MR. ELSNER: Objection.

12 A The truth is, if that's the case, I was not aware
13 of that, as I testified.

14 BY MS. FUMETON:

15 Q Are you surprised to learn that that information
16 was being used for purposes of that litigation?

17 MR. ELSNER: Objection.

18 A I'm not surprised because I don't make the
19 decisions for the DOJ and in many cases don't know
20 where the cases go or how the reports are utilized.
21 I simply provide the expertise and then turn it
22 over to DOJ.

23 BY MS. FUMETON:

24 Q So how much have you been paid in total under the
25 two contracts that we've just looked at, Exhibit A

1 and Exhibit B, for consulting work against Walmart?

2 MR. ELSNER: Objection. You can answer to the
3 extent that that information has been made publicly
4 available.

5 A The information has not been made publicly
6 available, but it's within the budget that has been
7 proposed for this contract.

8 BY MS. FUMETON:

9 Q Did you receive any materials from your work with
10 the DOJ that you're relying on for purposes of your
11 expert report in this case?

12 A No, none whatsoever.

13 Q Earlier you testified that you were using your
14 experience and all the years of work in this
15 industry and knowledge you've gained as part of
16 your opinions in this case, correct?

17 A Yes.

18 Q Would that include the work that you've done with
19 the DOJ under these two agreements with respect to
20 Walmart?

21 MR. ELSNER: Objection.

22 A Not the specific facts of the case. When I serve
23 as an expert witness, everything remains
24 confidential, and when I'm done with a case, all
25 those materials are destroyed, and that is not

1 anything I use in future cases.

2 The knowledge I may have gained in general
3 about the concepts and about the red flags and
4 such, that knowledge stays with me, but anything
5 particular to a client or to a defendant or to a
6 plaintiff, I do not use in future cases.

7 BY MS. FUMETON:

8 Q But to be clear, your report in this case, in fact,
9 references that litigation which you're a
10 consulting expert on for the DOJ against Walmart,
11 correct?

12 MR. ELSNER: Objection.

13 A Yes. It references information in the complaint
14 that I thought was particularly useful and helpful,
15 but it had nothing to do with North Carolina.

16 BY MS. FUMETON:

17 Q And are you going to adhere to Special Master
18 Cohen's comments and Mr. Elsner's comments that you
19 can't testify about what your communications are
20 with the DOJ under those agreements, even though
21 you are citing that case as evidence of something
22 you're relying on in this litigation against my
23 client?

24 MR. ELSNER: Objection.

25 A Special Master Cohen and Mr. Elsner know a lot more

1 than I do, so my answer is, yes, I'm not going to
2 testify to that information.

3 MS. FUMETON: Well, I'm going to issue a
4 formal objection that I think it's completely
5 inappropriate that he is working as a consulting
6 expert in litigation on behalf of the DOJ and
7 litigation against Walmart and, in fact, is
8 referencing that litigation as a basis for his
9 opinion in this case and is now hiding behind the
10 consulting agreement to tell us what information he
11 has.

12 So we can adjust this at a later time, but I'm
13 going to decide what further action we might need
14 to take with respect to this. But I object to his
15 refusal to answer this question.

16 At this point in time, though, I'm going to --

17 MR. ELSNER: Wait, wait. Just so the record
18 is clear, his references in his expert report in
19 the MDL are to his -- are to the Walmart publicly
20 filed complaint.

21 And he has testified that he has not relied
22 upon any documents that he was given or any facts
23 he was provided with respect to his consultancy
24 work for the Department of Justice for use in the
25 MDL opioid litigation and, therefore, it's not

1 appropriate for you to be able to inquire into
2 those matters.

3 MS. FUMETON: I disagree completely,
4 especially since he is relying on that litigation,
5 allegations in that litigation that he has
6 knowledge about that my client does not have
7 knowledge about of what those discussions are, what
8 those characterizations have been for purposes of
9 his opinion in this case.

10 So I think it's completely inappropriate, and
11 so we reserve all of our rights to object and take
12 whatever action we think is necessary. At this
13 point in time --

14 MR. ELSNER: The record says the opposite.
15 The record indicates that he cited to the publicly
16 available complaint, which is available to your
17 client, and in fact relates to documents held and
18 produced by your client to the Department of
19 Justice.

20 So all of that information is available to
21 Walmart, and he only relied upon the publicly filed
22 complaint.

23 But I think the record is now clear if you
24 want to find some -- if you want to challenge that
25 ruling, we can take it up at a different time.

1 MS. FUMETON: I'm going to pass the witness at
2 the time but reserve right to revisit this issue
3 and also to ask any additional Walmart-specific
4 questions after the other areas of inquiry are done
5 by our codefendants.

6 MR. BUSH: Thank you, Tara.

7 CROSS-EXAMINATION

8 QUESTIONS BY GRAEME BUSH:

9 BY MR. BUSH:

10 Q Mr. Catizone, my name is Graeme Bush, and I
11 represent CVS Pharmacy in the Track 3 litigation
12 that your expert report has been filed in, so I'm
13 going to ask you some questions now.

14 I'm going to focus on the portion of your
15 report that addresses red flags, and I think before
16 we get into individual red flags, I wanted to ask
17 you some general questions about how the red flags
18 were developed and what they're intended to mean.

19 I intend to go into some more detail with
20 respect to particular red flags later on in the
21 examination, but at this point, I'm just going to
22 ask you some general questions just so you have a
23 perspective where I'm coming from right now.

24 I don't know why my screen is having Tara up
25 here and nothing else. Let me see if I can fix

1 that so I can see the witness.

2 Actually, Mr. Catizone, could you say hello or
3 something and see if you pop up?

4 A It's a pleasure to meet you, Mr. Bush.

5 Q Thank you. Pleasure to meet you too. Now it seems
6 to be working. Sorry.

7 So your report, beginning at page 27, talks
8 about 16 red flags that are the subject of your
9 report.

10 You know what I'm referring to in your report?

11 A Yes, sir.

12 Q Okay. My general question is to ask you if you
13 could explain how those red flags are supposed to
14 work insofar as a pharmacy, any of the pharmacy
15 defendants is concerned.

16 What was supposed to happen with these
17 prescriptions that flagged under any of the 16 red
18 flags?

19 A A red flag, as the name indicates, was an indicator
20 or warning sign that there were issues with the
21 prescription that caused some concern and that
22 those issues needed to be resolved before the
23 prescription could be dispensed.

24 Q Is that true for every single prescription that is
25 identified in your 16 red flags?

1 A Based on the aggregate data that I looked at, sir,
2 I would say if it had a red flag, then that red
3 flag needed to be resolved.

4 Q So what was the pharmacist who was presented with
5 each of these prescriptions that flagged under your
6 16 red flags supposed to do?

7 A Resolve the red flag and substantiate that the
8 prescription was a legitimate prescription and
9 whatever the issue was that the red flag was
10 pointing to, that that was resolved and if the
11 pharmacist could proceed and know that that was a
12 legitimate prescription.

13 Q Okay. And in particular, what was the pharmacist
14 supposed to do in order to resolve the red flag?

15 A It would again upon the red flag. Some red flags
16 would involve calling the prescriber directly.
17 Other red flags would involve looking at the PDMP.
18 Other red flags might be a complete review of the
19 patient information or behaviors of the patient,
20 activities of the prescriber. So each red flag may
21 have its own set of actions that would be required.

22 Q So is it your opinion that each of the
23 prescriptions that is identified under your 16 red
24 flags was, in fact, a red flag? What I mean by
25 that, is it correct that your opinion is that there

1 were no other circumstances that might have been
2 known to the pharmacist to whom the prescription
3 was presented that would have meant that, even
4 though it flags under your metrics, it really
5 wasn't a red flag?

6 MR. ELSNER: Objection.

7 A Information that would have helped me in that
8 regard, sir, is whether or not I had access to the
9 patient notes or the documentation that the
10 pharmacist subscribed to that prescription to know
11 whether or not that was the case.

12 Absent that information, all I can assume is
13 that there was a red flag with that prescription
14 and it was not resolved and that's why it was
15 included.

16 BY MR. BUSH:

17 Q All right. We'll get into that a little bit more
18 in some of the specific questions about specific
19 red flags.

20 Let me ask you this. Is it your opinion that
21 each of the prescriptions identified by each of
22 your red flags should not have been filled?

23 A Yes, sir, it is.

24 Q And is it your opinion that each of the
25 prescriptions identified by each of your red flags

1 was diverted to a use that was not intended?

2 A I can't comment to say that each individual
3 prescription, but I could say based upon the other
4 data that I reviewed, a significant number of those
5 prescriptions were diverted.

6 Q And is it the opinion that each of the
7 prescriptions identified by each of your red flags
8 was written by a prescriber not for a legitimate
9 medical purpose?

10 MR. ELSNER: Objection.

11 A I believe that some of the red flags indicated
12 that, and other red flags may have indicated that
13 it was the patient's behavior that signaled that
14 the prescription was not for legitimate medical
15 purpose.

16 BY MR. BUSH:

17 Q And in that situation, the second situation, is
18 that a situation in which you say that it's your
19 opinion that the prescription or the drugs
20 dispensed to fill the prescription were diverted?

21 A Yes, sir. Anytime the prescription was not used as
22 intended or for legitimate medical purpose, then
23 that would have been considered diverted.

24 Q Is it your opinion that the pharmacists who filled
25 each of the prescriptions flagged by your red flag

1 methodology violated his or her corresponding
2 responsibility in filling the prescriptions?

3 A Yes, sir.

4 Q The individual pharmacist violated a corresponding
5 responsibility?

6 A The individual pharmacist and the pharmacy, sir.

7 Q But I'm focused on the individual pharmacist. The
8 individual pharmacist -- it's your opinion that the
9 individual pharmacist violated his or her
10 corresponding responsibility by filling each of the
11 prescriptions that are identified in your 16 red
12 flags?

13 MR. ELSNER: Objection.

14 A Without the documentation, my answer is yes, sir.

15 BY MR. BUSH:

16 Q So do you have any other opinions about these
17 prescriptions --

18 MR. ELSNER: Objection; vague.

19 BY MR. BUSH:

20 Q -- other than the ones that I've taken you through
21 so far?

22 MR. ELSNER: Objection.

23 A I don't understand your question, sir. I don't
24 know what you mean by "other opinions." If you
25 could clarify, I would appreciate it.

1 BY MR. BUSH:

2 Q Well, let me give you an example.

3 Do you have any opinions about whether these
4 prescriptions were consistent or inconsistent with
5 the standard of care that applied to prescribers?

6 MR. ELSNER: Objection.

7 A I would say that those prescriptions were the red
8 flags pointed to the prescriber, then I would say
9 the prescribers in those cases did not adhere to
10 the standards of care.

11 BY MR. BUSH:

12 Q And do you have any opinions about whether or not
13 the pharmacist, in filling these prescriptions
14 identified in your 16 red flags, violated any
15 standard of care that applies to pharmacy practice?

16 A Yes, based upon the red flag, there were standards
17 of care that were violated as well.

18 Q Do I take it from your answer that you think the
19 standard of care is independent -- withdrawn.

20 Do I take it from your answer that you
21 consider that the standard of care is independent
22 from the obligations that a pharmacist has under
23 DEA regulations governing corresponding
24 responsibility?

25 MR. ELSNER: Objection.

1 A No, sir. They are complementary.

2 BY MR. BUSH:

3 Q Are they at the same or -- you say "complementary."
4 That can mean that one of them is -- that they are
5 a little different. But are they the same or are
6 they different?

7 A In 1306.04, the requirement for documentation is
8 spelled out. In the Hills Pharmacy case, the
9 opinion rendered, said in the absence of
10 documentation, that it was probative of a failed
11 resolution of the red flags. In Superior
12 Pharmacies I and II, "The absence of the
13 documentation was the inference that they failed to
14 resolve the red flag and therefore violated a
15 standard of care."

16 So I think they were equal and complementary,
17 sir.

18 Q Okay. Are you saying that the lack of
19 documentation -- or what you're referring to here
20 is lack of documentation about resolution of red
21 flags is a violation of the standard of care?

22 A Yes, sir.

23 Q Are you saying it's also in violation of the
24 Regulation 1304?

25 A 1306.04, yes, sir.

1 Q Excuse me, 1360.04. So it's a violation of both?

2 A Yes, sir.

3 Q Would you agree with me that corresponding
4 responsibility is a matter of the professional
5 judgment of the pharmacist taking into account all
6 the facts and circumstances known or available to
7 the pharmacist at the time the prescription is
8 presented to be filled?

9 A As part of the corresponding responsibility, yes,
10 sir.

11 Q Now, I think you've also expressed some opinions
12 here that are really not going to be the subject of
13 most of my questioning, but I do want to refer to
14 them here. And you've expressed some opinions
15 about information that in your view should have
16 been made available to the pharmacist filling a
17 prescription by the pharmacy company.

18 Do you know what I'm referring to?

19 A If you can point to that in my report, sir, that
20 would help me.

21 Q You don't know that you have an opinion that the
22 pharmacy companies are supposed to supply certain
23 information to the pharmacists and their failure to
24 do so is a violation of the standard of care? You
25 don't know that that's your opinion?

1 MR. ELSNER: Objection.

2 A I know it's my opinion, sir. I didn't know if you
3 were referencing a particular point within that
4 opinion.

5 BY MR. BUSH:

6 Q No. I'm just referencing that general point so
7 that you know the context of my question.

8 A Yes.

9 Q So if a pharmacist did not have information that,
10 in your opinion, the pharmacy company should have
11 been made available to the pharmacist using its
12 dispensing data, you're saying that that is what
13 caused the pharmacist to violate his or her
14 corresponding responsibility?

15 A I'm saying that contributed to the violation, sir.

16 Q Even if she did have information that you think the
17 pharmacy company should have made available to the
18 pharmacist filling a prescription, the pharmacist
19 would still have to exercise corresponding
20 responsibility to decide whether there was a red
21 flag, first of all.

22 Do you agree with that?

23 A Yes, sir.

24 Q And then second of all, would have to exercise
25 corresponding responsibility to decide whether or

1 not to fill the prescription?

2 A Yes, sir.

3 Q Would you agree with me that just because a
4 prescription flags under one of your 16 red flags,
5 that does not mean that it was written for an
6 illegitimate medical purpose?

7 A Yes, sir.

8 Q And would you agree with me that it also does not
9 mean that the drugs that were dispensed to fill
10 that prescription were diverted?

11 A Yes, sir.

12 Q And you have not made any effort in your -- if you
13 have, tell me. But as I understand it, you've not
14 made any effort to determine how many of the
15 prescriptions that flagged under your flags 1
16 through 16 were actually diverted?

17 MR. ELSNER: Objection.

18 A Not the individual numbers, sir, no.

19 BY MR. BUSH:

20 Q And you haven't made any effort to determine how
21 many of the prescriptions that flagged under your
22 16 red-flag methodologies were not written for a
23 legitimate medical purpose?

24 A Not individually, sir.

25 Q And you would agree with me, would you not, that

1 many of the prescriptions that flagged are likely
2 to have been written for a legitimate medical
3 purpose?

4 MR. ELSNER: Objection.

5 A No, sir.

6 BY MR. BUSH:

7 Q Do you think any of them were?

8 A Yes, sir.

9 Q And would you agree with me that many of the
10 prescriptions that have flagged in your red flags 1
11 through 16 were most likely not diverted to a
12 purpose other than not for which the prescription
13 was written?

14 A No, sir, I would not agree with that.

15 Q You would agree with me that some were?

16 A Yes, sir.

17 Q Can you tell me what your definition of diversion
18 is?

19 A The Controlled Substances Act was designed to
20 create a closed system of distribution for
21 controlled substances. Now, starting with the
22 manufacturer through the distributor, through the
23 prescriber, through the pharmacy, and ultimately to
24 the patient. Anything outside of that closed
25 system is what I would consider diversion because

1 it's not used for its intended purpose and it
2 violates the closed distribution system that was
3 intended by the CSA.

4 Q When the prescription is dispensed to the patient
5 who presented the prescription, it goes outside the
6 closed distribution system, right?

7 A The closed distribution system ends with the
8 patient, and that's where the system ends.

9 Q So once it's dispensed to the patient, it's outside
10 the closed distribution system?

11 A Correct.

12 Q Are you familiar with the term "medicine cabinet
13 diversion"?

14 A Yes, I am, sir.

15 Q And are you familiar with any of the studies that
16 have assessed how much medicine cabinet diversion
17 occurs?

18 A Somewhat familiar, sir, yes.

19 Q And are you also familiar with studies that have
20 assessed how much diversion occurs because drugs
21 that were dispensed to family or friends are given
22 to other members of the family or other friends?

23 MR. ELSNER: Objection.

24 A Yes. I'm familiar with some of those studies, sir.

25 BY MR. BUSH:

1 Q And you would agree -- or would you agree that
2 that's all -- both of those kinds of diversion are
3 diversion that occurs after the patient has
4 received a legitimate medical prescription?

5 MR. ELSNER: Objection.

6 A No, sir. I think it occurs both with a legitimate
7 and a not legitimate prescription.

8 BY MR. BUSH:

9 Q But it definitely occurs in a number of cases where
10 somebody has gotten a legitimate medical
11 prescription, didn't use all of them -- I'm giving
12 you an example -- but didn't use all of the opioids
13 that were prescribed, left it in their medicine
14 cabinet and then some family member, friend, maid,
15 or whomever took it from the medicine cabinet?

16 MR. ELSNER: Objection.

17 A That's the process that occurs, but had the
18 pharmacist properly counseled the patient on
19 disposal of that medication, that scenario could be
20 avoided.

21 BY MR. BUSH:

22 Q And we don't know whether the pharmacist did
23 properly counsel the patient on that, right?

24 MR. ELSNER: Objection.

25 BY MR. BUSH:

1 Q There's no way to know that?

2 A That would be in the documentation of the patient
3 notes and the prescription.

4 Q Do you think that the patient notes, it's the
5 standard of care that a pharmacist documents
6 everything that she told a patient about the proper
7 disposal of opioids?

8 A Under the requirements that were enacted in
9 OBRA '90 and the state boards of pharmacy also
10 codified, one of the nine elements that the
11 pharmacist is supposed to counsel patients on is
12 proper disposal. So if a pharmacist marked that
13 they counseled the patient, then they either
14 falsified their documentation saying that they
15 didn't or they failed to document what they talked
16 to pharmacist about.

17 Q I understand you're referring to with OBRA. Does
18 that requirement include the requirement that they
19 document every conversation about the proper
20 disposal of opioids?

21 A No, sir.

22 Q So going back to the example I gave that -- one way
23 that medicine cabinet diversion occurs, do any of
24 your red flags identify the possibility of that
25 kind of medicine cabinet diversion? And just to be

1 clear so that we're talking the same language, a
2 legitimate prescription that the patient doesn't
3 use all of and is ultimately taken by somebody else
4 from that patient's medicine cabinet and used in a
5 way that isn't in accordance with the prescription?

6 MR. ELSNER: Objection.

7 A In the context of a legitimate prescription, sir,
8 the answer is no.

9 BY MR. BUSH:

10 Q Now, I also asked you earlier about diversion that
11 occurs after a prescription is dispensed because
12 the patient who received the prescription gives
13 some of it to family members or friends who were
14 not on the prescription.

15 Is your answer the same, that there's none of
16 your red flags that identifies that kind of
17 diversion?

18 MR. ELSNER: Objection.

19 A For a legitimate prescription, the answer is none
20 of the red flags identify that activity.

21 BY MR. BUSH:

22 Q Are you aware of any assessments of how much --
23 withdrawn.

24 Are you aware of any studies that assess what
25 percentage of people who end up misusing opioids

1 got their opioids from friends and family?

2 A No, sir, I can't recall. I'm not aware of any.

3 Q You're not familiar with the SAMHSA study that says
4 over 50 percent of people who were studied and were
5 engaged in opioid abuse said that they got their
6 opioids from friends and familiar?

7 A Yes, sir, I'm aware of the SAMHSA. I'm sorry. I
8 didn't realize that was a study. I'm aware of that
9 SAMHSA data.

10 Q Do you agree with that or disagree with that?

11 MR. ELSNER: Objection.

12 A I would have no way or no reason to disagree with
13 it, sir.

14 BY MR. BUSH:

15 Q And are you aware of studies that have been cited
16 that approximately 70 percent of people who report
17 nonmedical use of prescription medications,
18 including opioid pain relievers, say that they got
19 their drugs from a friend or family member?

20 MR. ELSNER: Objection.

21 A I've seen statistics like that, sir, yes.

22 BY MR. BUSH:

23 Q And do you agree or disagree with those?

24 MR. ELSNER: Objection.

25 A I think coming from credible sources, I would agree

1 with those statistics.

2 BY MR. BUSH:

3 Q Is it your view that one of the indications that
4 you're relying on that there was diversion in the
5 two counties that, in your view, there were just
6 too many opioid medications flooding the counties?

7 A That was one of the reasons.

8 The other reason is that the number of people
9 who died from drug overdoses, including opiates,
10 were four per day from 2006-2009, and then
11 increased in Trumbull County from 11 in 2009 to
12 2017 to 69 people per hundred thousand, and in Lake
13 County it moved from 9 to 46 people per a hundred
14 thousand.

15 So if all those prescriptions were for
16 legitimate purposes, the data would have been
17 otherwise, so the number of prescriptions dosages
18 mentioned in my report per person in those two
19 counties and then the death rates from drug
20 overdoses are what lead me to believe a significant
21 number of those prescriptions were not for
22 legitimate purposes and were diverted.

23 Q Now, focusing on the amount of prescription opioids
24 that were placed into the counties, just the sheer
25 number by itself doesn't identify whether any

1 particular prescription is legitimate, right?

2 A Not individual prescription, but clearly a
3 significant number of prescriptions would be, sir.

4 Q And it doesn't help a pharmacist determine whether
5 a script that's being presented to be filled is
6 legitimate on a prescription-by-prescription basis,
7 right?

8 A I'm sorry. I didn't understand the question.

9 Q The fact that there are a lot more opioids being
10 shipped into the county doesn't help a pharmacist
11 decide whether any particular prescription is being
12 presented to be filled is legitimate or is likely
13 to be diverted?

14 MR. ELSNER: Objection.

15 A I disagree. That would be data that the
16 corporation and pharmacy has that should be made
17 available to the pharmacist so they would be able
18 to see, though, when an individual prescription
19 came in, if it was for an opioid, and they kept
20 seeing those opioid prescriptions and they had this
21 distribution data from the pharmacy and
22 corporation, they would know that that individual
23 prescription had a red flag and was problematic.

24 BY MR. BUSH:

25 Q Just because there's a lot of prescriptions --

1 excuse me -- a lot of opioids that are being
2 shipped into the county, they would know that this
3 particular prescription is likely to be diverted?

4 Is that your testimony?

5 MR. ELSNER: Objection.

6 A Yes, sir. Not just because it's a prescription,
7 it's an opioid, which is a dangerous drug that
8 kills people, and the pharmacist should know that
9 it's paying special attention to the quantities of
10 opioids.

11 BY MR. BUSH:

12 Q So how does that distinguish any one prescription
13 that is presented, any one opioid prescription that
14 is identified -- is presented to the pharmacist to
15 be filled from any other?

16 A Every prescription for a controlled substance,
17 particularly opioid, is an immediate pause for the
18 pharmacist because of the deadly nature of those
19 products and the problems with addiction,
20 diversion, and abuse.

21 So every individual prescription for an opioid
22 is something that the pharmacist has to carefully
23 review and then utilize all of the other
24 information available to them to make a
25 determination on an individual prescription.

1 Q But that pharmacist still has to make that
2 determination exercising his or her professional
3 judgment and taking account of all the information
4 that's available to her concerning the prescription
5 that's being presented to her to be filled?

6 MR. ELSNER: Objection; form.

7 A Yes, sir.

8 BY MR. BUSH:

9 Q Would you agree with me that it would be
10 inappropriate for a pharmacist to refuse to fill a
11 particular script just because she knows that there
12 are a lot of prescription opioids that have been
13 shipped to or dispensed in two counties?

14 A No, sir, I would not agree with you?

15 Q So you think that if I bring my opioid prescription
16 into a pharmacist in Lake County and that she can
17 refuse to fill it just because there's been a lot
18 of prescription opioids that have been shipped into
19 the county?

20 MR. ELSNER: Objection.

21 A If she's a pharmacist who is aware that there's an
22 opioid problem in that county, people are dying,
23 and she sees a prescription for an opioid and is
24 not comfortable that that prescription is for a
25 legitimate purpose based upon the number of opioids

1 she is seeing in that county, then that pharmacist
2 should refuse to dispense that prescription.

3 BY MR. BUSH:

4 Q Would you agree with me that if a prescriber is not
5 writing opioid prescriptions for a legitimate
6 medical purpose, there are regulatory bodies that
7 can take action against the prescriber?

8 A Yes.

9 Q The Ohio medical board could suspend the doctor and
10 revoke his license?

11 A Yes.

12 Q The DEA could revoke its license to write
13 prescriptions for opioids?

14 A I think, sir, technically what the DEA would do
15 would be revoke his registration to prescribe
16 controlled substances. The DEA wouldn't issue a
17 license, but yes, sir.

18 Q Right, and without that registration, the doctor
19 couldn't prescribe opioids anymore, right?

20 A Yes, sir.

21 Q And the DEA also could initiate criminal actions
22 against a prescriber who was not writing
23 prescriptions for opioids for a legitimate medical
24 purpose?

25 A That's my understanding, sir, yes.

1 Q And local law enforcement could investigate and
2 bring actions against a prescriber who was not
3 writing prescriptions for a legitimate medical
4 purpose?

5 A The quick answer is yes. I think that would depend
6 upon the laws of the local and what was violated,
7 but overall, yes, sir.

8 Q I'm going to switch to a little different topic
9 here. You have expressed some opinions about PDMP
10 programs, and you have opinions expressed on
11 page 90 of your supplemental report, which is
12 Exhibit 2, if you want to take a quick look at it.

13 The heading for that section is "Corporate
14 Policies Failed to Make PDMP Checks Mandatory."

15 Do you see that?

16 A Yes, sir.

17 Q And you testify -- I see in here, that you've
18 referred in the second paragraph to InterConnect,
19 and you talked about that a little bit this morning
20 when you were talking with Ms. Fumerton, right?

21 A Yes, sir.

22 Q Now, you don't actually mention CVS in this
23 particular part of your report. I want to direct
24 your attention -- please feel free to look at that
25 and correct me if I'm wrong, but I think I'm right.

1 I want to direct your attention to page 64,
2 and there you do refer to PDMPs in the section in
3 which you're talking about CVS, and you say in the,
4 I guess, third paragraph -- fourth paragraph --
5 fourth paragraph down, "Despite recognition that
6 PDMPs are an invaluable tool for pharmacists to
7 prevent controlled substances from being diverted
8 or dispensed for nonmedical purposes, there was no
9 mandatory requirement to use PDMPs until 2015 to
10 resolve red flags."

11 Do you see that?

12 A Yes, sir.

13 Q So as I understand your report, you haven't done
14 any analysis of what the pharmacy defendants, who
15 were the subject of these PDMP opinions, would have
16 seen if they had consulted OARRS, which is -- let
17 me stop there.

18 You haven't done any analysis like that, have
19 you?

20 MR. ELSNER: Objection.

21 A No, I disagree, sir.

22 BY MR. BUSH:

23 Q Where have you done that, please? Please show me
24 in your report where you've told us what the
25 pharmacy defendants and their pharmacists would

1 have seen if they had consulted OARRS with respect
2 to any of the prescriptions that flagged under
3 flags 1 through 16?

4 A It's not in my report, but since I was involved in
5 the establishment of PDMPs and the InterConnect, I
6 know of all the data fields that are available and
7 what the pharmacist would see in a report from PDMP
8 that would be available to the CVS Pharmacies, sir.

9 Q But let me be clearer with my question. What I'm
10 asking you is whether you know, with respect to any
11 particular prescription that flags under red flags
12 1 through 16 in your report, what a pharmacist
13 would have seen with respect to that prescription
14 if the pharmacist had looked into the OARRS
15 database?

16 MR. ELSNER: Objection.

17 A Not the specific data but the data fields that that
18 pharmacist would have seen for every one of the
19 items on that prescription.

20 BY MR. BUSH:

21 Q Now, the data analysis that you rely on here, that
22 Mr. McCann performed, that data analysis for each
23 pharmacy defendant is limited to the dispensing
24 data produced by that pharmacy defendant; is that
25 your understanding?

1 A Yes, sir.

2 Q So neither you nor Mr. McCann have quantified or
3 identified what any pharmacy defendant would have
4 learned if it looked at OARRS data?

5 MR. ELSNER: Objection.

6 A Again, sir, I know per individual prescription what
7 data would have been available, but not
8 specifically, but they would know how many doctors
9 that patient had seen. They would have known how
10 many prescriptions for controlled substances they
11 received. They would have known how many
12 pharmacies that they went to. They would have
13 known all that information in a simple OARRS report
14 for every single individual prescription.

15 BY MR. BUSH:

16 Q Well, let me ask it this way.

17 Your opinion is not based in any way on what
18 the pharmacy defendants would or would not have
19 dispensed if any of them had looked at OARRS data
20 with respect to any of the prescriptions that flag
21 under your red flags 1 through 16?

22 MR. ELSNER: Objection.

23 A If I understand the question, sir, then I disagree.
24 I think had they looked at the OARRS data, that
25 would have helped the defendants make a

1 determination based upon the data as to whether or
2 not to fill that prescription.

3 BY MR. BUSH:

4 Q I don't think you're answering my question, though.

5 My question is, you don't know what the result
6 would have been if they had looked at that data?

7 You don't know whether any particular prescription
8 would have been dispensed or they would have
9 refused to dispense?

10 MR. ELSNER: Objection.

11 A Correct, sir, yes.

12 BY MR. BUSH:

13 Q All right. And you also don't know how often any
14 of the pharmacists at any of the pharmacy
15 defendants consulted OARRS with respect to the
16 prescriptions that have been flagged in red flags 1
17 through 16?

18 A I don't. But that information would have been
19 available to the corporation through the OARRS
20 program.

21 Q And you haven't done any investigation to find out?

22 MR. ELSNER: Objection.

23 A No, sir.

24 BY MR. BUSH:

25 Q And you agree that the pharmacists for each of the

1 pharmacies -- excuse me, pharmacy defendants have
2 the ability to consult OARRS in connection with any
3 opioid prescription that was presented to them to
4 be filled if they determined in their professional
5 judgment that it was appropriate and it would be
6 helpful?

7 MR. ELSNER: Objection.

8 A I need to qualify that -- my response, sir, because
9 at one time, firsthand information presented to me
10 by CVS pharmacists was that CVS pharmacists could
11 only use the CVS intranet, and they were prohibited
12 from using the internet which provided them access
13 to PDMP. And so they would have to access PDMP
14 through their smartphones because they were not
15 allowed to do so with the pharmacy operating
16 system. And that was conveyed to me while I was
17 executive director of NABP in the time period about
18 2016 to 2017, sir.

19 BY MR. BUSH:

20 Q Right. And if it turns out that what you think you
21 were told is wrong, then -- actually, withdrawn.

22 The CVS pharmacists could still consult OARRS
23 if they thought it was appropriate to do so and
24 would help exercise their professional judgment?

25 A Utilizing their own phones and a great burden to

1 them compared to having it as part of the CVS
2 intranet system, sir.

3 Q Now, in the section of your report that I quoted,
4 you said there was no mandatory requirement to use
5 PDMPs until 2015 at CVS. Independently of any
6 policies and procedures, a pharmacist has a
7 professional responsibility to abide by legal
8 requirements, right?

9 MR. ELSNER: Objection.

10 A Yes, sir.

11 BY MR. BUSH:

12 Q And there were legal requirements in Ohio about
13 circumstances in which a pharmacist was supposed to
14 consult the PDMP?

15 A Yes, sir. And that's contained in my report.

16 Q And you don't have any reason to believe that the
17 defendants -- any of the defendants' pharmacists
18 failed to comply with their professional
19 responsibilities and consulted OARRS when it was
20 legally mandated that they do so?

21 A I have reason to believe they did not do so because
22 if they did, then the proliferation of red flags
23 and the dispensing of those prescriptions would not
24 have occurred to the level that I was able to
25 track.

1 Q You have no -- you don't know whether the
2 defendants' pharmacists failed to comply with their
3 professional and legal responsibilities, do you?

4 MR. ELSNER: Objection.

5 A Every red flag that wasn't resolved and a
6 prescription dispensed, my answer would be they did
7 not meet that, but I can't identify that to an
8 individual prescription, sir.

9 BY MR. BUSH:

10 Q Have you reviewed in the data that has been
11 produced by Mr. McCann following your red flag
12 analysis how many prescribers have prescriptions
13 flagged under your methodologies?

14 MR. ELSNER: Objection.

15 A No, sir.

16 BY MR. BUSH:

17 Q Have you reviewed how many unique patients had
18 prescriptions that flagged under your
19 methodologies?

20 A No, sir.

21 Q You're aware that the DEA has said that the
22 overwhelming majority of American physicians who
23 provide controlled substances do so for legitimate
24 medical purposes?

25 A I wasn't aware of that statement, sir.

1 Q Okay. Are you aware that the DEA has said that the
2 overwhelming majority of physicians who prescribe
3 controlled substances do so in a legitimate manner
4 that will never warrant scrutiny?

5 A I'm not familiar with that opinion either, sir, or
6 that statement.

7 Q Are you familiar with the DEA's statement that
8 nearly every prescription issued by a physician in
9 the United States is for a legitimate medical
10 purpose in the usual course of professional
11 practice?

12 A No, sir, not familiar with that.

13 Q Would you agree with me that prescribers from
14 well-regarded practices, clinics or hospitals are
15 not likely to be writing prescriptions that are not
16 for a legitimate medical purpose?

17 MR. ELSNER: Objection.

18 BY MR. BUSH:

19 Q Sorry for the double negative on that. Maybe I
20 should ask it again.

21 Would you agree that prescribers from
22 well-regarded practices, clinics or hospitals are
23 unlikely to be writing illegitimate medical
24 prescriptions for opioids?

25 MR. ELSNER: Objection.

1 A No, sir. The institution doesn't have a bearing on
2 whether or not the individual engages in that
3 conduct to a large extent.

4 BY MR. BUSH:

5 Q So would you agree that the Cleveland Clinic is
6 reputable and nationally well-regarded?

7 A Yes, sir.

8 Q Would you agree that University Hospitals is?

9 A I'm not familiar with University Hospitals.

10 Q So you don't -- well, do you agree that the
11 prescribers and doctors at those facilities are
12 unlikely to be writing prescriptions that are not
13 in the doctor's judgment for a legitimate medical
14 purpose?

15 MR. ELSNER: Objection.

16 A I can only answer that based upon my experience,
17 and I can tell you that there have been prescribers
18 from some of the most reputable institutions and
19 hospitals that have been writing prescriptions for
20 illegitimate purposes and also have been convicted
21 of those activities.

22 BY MR. BUSH:

23 Q And do you think that's typical?

24 MR. ELSNER: Objection.

25 A I don't know if it's typical or not. I think

1 that's a question based upon each individual
2 institution and the policies they have in place to
3 enforce them.

4 BY MR. BUSH:

5 Q And you haven't done anything to investigate how
6 often that happens?

7 MR. ELSNER: Objection.

8 A No, sir.

9 BY MR. BUSH:

10 Q So I want to talk a little bit about the red flags
11 that were identified by Mr. McCann.

12 MR. ELSNER: Objection.

13 MR. BUSH: Why, I can't talk about that?

14 MR. ELSNER: You can talk about it, but you're
15 mischaracterizing what was done. So I object to
16 the way you framed the question.

17 BY MR. BUSH:

18 Q So I think you said that you did review
19 Mr. McCann's report; is that right?

20 A Yes, sir.

21 Q Do you recall in his original report that he
22 describes red flags numbered 17 through 43?

23 A I recall seeing that in the report, sir, yes.

24 Q Did you rely on those red flags in the original
25 report for anything at all?

1 A No, sir.

2 Q So let me ask you to take a look at your --
3 actually, probably the best way to do this is to
4 look at Exhibit 3, which has the redline changes.

5 Do you have that?

6 A Yes, sir.

7 Q And I'd like you to take a look at Footnote 126,
8 which is on page 51.

9 A Yes, sir.

10 Q Okay. It says: "The flagged prescriptions were
11 limited pursuant to the Court's May 10th, 2021
12 Order to prescriptions flagged by the universe of
13 884,166 prescriptions previously disclosed by
14 plaintiffs in their June 2020 response to
15 interrogatories referred to as the 'Combination Red
16 Flagged Prescriptions'."

17 Do you see that?

18 A Yes, sir.

19 Q And did you review any of the universe of 884,166
20 prescriptions previously disclosed by plaintiffs in
21 their June 2020 response to interrogatories?

22 A In reviewing Mr. McCann's report, I was able to
23 look at some of the spreadsheets that were utilized
24 to prepare that data, that information.

25 Q To prepare the data that was disclosed in June of

1 2020 in the response to interrogatories? Is that
2 what you referred to?

3 MR. ELSNER: Objection.

4 A Spreadsheets that listed prescriptions and then
5 became the basis for the analysis provided back to
6 me. I'm not sure if that was the June 2020 or
7 where that fell into the sequence, sir.

8 BY MR. BUSH:

9 Q And when you say that that was used to provide the
10 data back to you, you're talking about the data
11 that was used in your supplemental report?

12 A Yes, sir.

13 Q Is that right?

14 Okay. Did you do any investigation to
15 determine how those 884,166 prescriptions
16 previously disclosed had been determined?

17 A No, sir.

18 Q Did you ask Mr. McCann how they had been
19 determined?

20 A No, sir.

21 Q You said earlier that you spoke to Mr. McCann
22 twice, I think. Did you speak more frequently to
23 any of the people who worked on the report for
24 him --

25 A No, sir.

1 MR. ELSNER: Objection.

2 BY MR. BUSH:

3 Q -- any of his staff?

4 You never talked to his staff independently of
5 talking to him?

6 A No, sir.

7 Q So did you do anything to make any judgment whether
8 the previously disclosed prescriptions made any
9 sense to limit the number of red flag prescriptions
10 that your opinion is based on?

11 MR. ELSNER: Objection.

12 A No, sir. I simply reviewed the data provided to
13 me, came up with the red flags that I thought
14 were -- present an opinion on, and then asked
15 Mr. McCann to run data on those 16 red flags that I
16 identified.

17 BY MR. BUSH:

18 Q I'd like you to take a look at a document that I'm
19 going to have to put up on the screen.

20 Mike, this is the sample that you and I
21 corresponded about.

22 MR. ELSNER: Yeah, that's fine. It's actually
23 not in the room with him. We need to take it to
24 him to load it.

25 MR. BUSH: Actually, I think I can just put it

1 up here. I'm not going to --

2 MR. ELSNER: That's fine.

3 MR. BUSH: -- ask a lot of questions about it.
4 I just want to ask you a few questions about it.
5 If it turns out you need to, you know, look at it
6 more than you can do on the screen, we can --

7 MR. ELSNER: I misunderstood you. I thought
8 you needed us to load it on his computer. If you
9 can screen share it, go for it.

10 MR. BUSH: Jason, can you -- Jason Acton --
11 put up the sample data on the screen share.

12 Not that.

13 MR. ELSNER: That's a good one.

14 MR. BUSH: It's the one I sent you this
15 morning, Jason, in an attachment to the email.
16 There you go.

17 Can we get rid of all the junk on the right of
18 this screen and then blow this up? It's going to
19 be a little hard to see it, I think, the way it is
20 now. Even if we can't get rid of -- just click the
21 arrow I think by comments, I think that will close
22 that window.

23 MR. ACTON: There's a double arrow on the top
24 right.

25 MR. BUSH: There you go.

1 There we are. Now can we blow this up so it
2 takes the whole screen? Okay.

3 If we can't, let me just move on with it.

4 BY MR. BUSH:

5 Q This is a document that was listed in the materials
6 you reviewed -- what happened? I lost him?

7 A The document is not there.

8 Q Yeah, I know. We lost him. He was probably trying
9 to blow it up.

10 Well, let me ask you a question before --
11 he'll be back, and he'll get it up here, but let me
12 ask you the preliminary question.

13 In your -- I guess it's Appendix B, which is
14 marked as Exhibit 6.

15 A Yes, sir.

16 Q Yeah. If you'll take a look at that, you'll see
17 that there's a list -- on the list, there's
18 something called "CVS Sample Data."

19 A Is that on the first page of second page or --

20 MR. ELSNER: I believe it's the second page.

21 BY MR. BUSH:

22 Q It's on the second page. It says "CVS dispensing
23 data sample." It's maybe five or six lines, seven
24 lines down.

25 A I found it. Thank you, sir.

1 Q Okay. And what we were trying to put up on the
2 screen was the actual document, and I wanted to ask
3 you some questions about it. But while we're
4 waiting to see if my colleague can get back on to
5 this -- actually, you know something, can you tell
6 me what use you made of the CVS sample data?

7 A I reviewed it as part of my report, looking at
8 information in there, patient name, drug,
9 quantities, any of the information in the table,
10 that was something I reviewed.

11 MR. BUSH: Okay, Mike, I'm going to share
12 this, I'm going to try and share this myself, and
13 hopefully I will do a better job. So let me pop
14 this -- maybe I don't have the right -- oh, yes, I
15 do. Here we go.

16 MR. ELSNER: Extra credit for any lawyer that
17 can operate the technology.

18 MR. BUSH: Yeah, well, can you see it or not?

19 MR. ELSNER: Yes, sir.

20 MR. BUSH: Okay, I get extra credit.

21 BY MR. BUSH:

22 Q So this is what was in the materials and identified
23 as the CVS sample data, and just looking at this
24 now, how much -- first of all, tell me how much
25 time you spent looking at this in the course of

1 formulating your report and your opinions?

2 MR. ELSNER: Objection.

3 A Yeah, I can't remember. Sorry. I know I looked at
4 it, but I can't tell you exactly how much time I
5 spent there. I know it was -- I couldn't quantify.
6 Sorry.

7 BY MR. BUSH:

8 Q And there are similar data samples for each of the
9 other defendant, pharmacy defendants in the case,
10 right?

11 A Yes, sir.

12 Q And you looked at the same reports for them?

13 A Yes, sir.

14 Q And looking at this table now, can you tell me
15 anything about the table that you particularly
16 focused on?

17 A [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

25 Looking at the data this way, it's very

1 difficult for me to pick up anything, but if you
2 could manipulate the data the way I did, I would be
3 glad to comment on that.

4 Q [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

8 Do you want to look at it and tell me what
9 you'd like me to do? I'm happy to sort it. I just
10 don't know what you're referring to.

11 A [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] --

14 Q Here?

15 A Yes. Can you open that tab, move your cursor over
16 to show what that full column says?

17 Q [REDACTED]
[REDACTED] [REDACTED]

19 A [REDACTED]
[REDACTED] [REDACTED]

21 Q [REDACTED] --

22 A [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

1

2

Q So I've done the first of that. I don't know that

3

I know how to do the second without --

4

A What you have to do is highlight all of the fields

5

and then go into data sort so that all of the

6

fields sort and all of the data then are

7

categorized by it. That's how I reviewed these

8

data sheets.

9

Q

█

█

█

13

A I don't think you did that. So if you've

14

highlighted all the fields, if you go up to the tab

15

now that says data at the top of the screen --

16

Q Oh, yeah, right.

17

A -- click on that, please.

18

Q Okay. Done.

19

A No, because you see -- nothing is -- is yourself

20

highlighted where it says "sort"? They're not

21

highlighted so where it says "sort" is where you

22

need to go into to sort those data.

23

Q I see. For whatever reason -- maybe this -- let me

24

make this a little bit smaller. Maybe this is

25

not -- it's not letting me do that.

1 A Okay. That's how I reviewed the data.

2 Q [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A I don't think it's sorted the other data because
7 I'm not -- I'm not saying you're right or wrong,
8 but if you didn't highlight all the fields, I'm not
9 sure the other fields got sorted.

10 Q No, I think it did. I think it did. The way the
11 sort work works, it sorts everything. I'm pretty
12 sure. I mean, let's go -- let's go backwards.

13 A Okay. Yeah.

14 Q Well, anyway, I'll tell you what, I'm not sure
15 we're going to be able to do this effectively, and
16 I don't want to waste everybody's time on it.

17 But to go to what you were trying to tell me,
18 you sorted it by patient, and then you looked at
19 the other data fields to, for example, to see what
20 the fill dates were and what the prescriptions were
21 and who the prescribers were and all of that.

22 Is that what you did?

23 A Yes, sir.

24 Q And this appears to be a subset. The first date
25 here is -- well, I don't know what the first date

1 is because I resorted it. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 MR. ELSNER: Objection.

12 A No, sir.

13 BY MR. BUSH:

14 Q Did you ask for this data table or did somebody
15 just provide it to you?

16 A It was just provided to me, sir.

17 Q All right. Let me ask you to take a look over --
18 actually, before I -- before I ask you to take a
19 look at this, some other columns here -- so looking
20 at all of this, what -- what use did you make of it
21 in formulating your opinion?

22 You're obviously not -- you didn't give
23 opinions on any particular patient or any
24 particular prescription. So how did this inform
25 the opinions that you did give?



24

25

1 I could remember the ZIP Code for that when you
2 scrolled through.

3 Q But all the different combinations and the
4 different prescribers and everything you said, that
5 all related not to a patient but to a ZIP Code?

6 A

■

■

■

10 Q Right. Okay. Let me ask you to take a look over
11 at these columns here, starting with column BS.
12 And going all the way over to the end. And I would
13 note for you, and ask you if you agree with me, it
14 starts with C1, and if you look -- if I highlight
15 this, I think I would see C1 INDIC.

16 Do you see up there? That's the title. If
17 you go all the way across here, we get to C27
18 INDIC, and then we go from starting here, INDIC all
19 C1 INDIC all to C27, INDIC all. And this is in the
20 tab called red flags.

21 Do you see down here?

22 What use, if any, did you make of this data?

23 A I didn't, sir.

24 Q You didn't?

25 (Simultaneous conversation.)

1 A I thought it was binary code for a computer system.

2 BY MR. BUSH:

3 Q Okay. So you don't know what it is?

4 A Correct, sir.

5 Q Okay.

6 A I looked at the individual patient data.

7 Q This is what we were talking about before?

8 A Yes, sir.

9 MR. BUSH: Now, if I can figure out how to
10 stop sharing the screen, we will go back to what we
11 were doing.

12 MR. ELSNER: Graeme, we've been going almost
13 two hours. And I know that the defendants had a
14 break while we were talking with Special
15 Master Cohen, but the plaintiffs didn't. I don't
16 want to interrupt your flow. If you have a few
17 more questions, that's fine. But at a good time,
18 it might helpful to take a lunch break.

19 MR. BUSH: No. This is actually a pretty good
20 time. Why don't we take it now.

21 So how long do we want to take for lunch?

22 MR. ELSNER: I think 30 minutes will be
23 plenty. We have lunch here.

24 THE VIDEOGRAPHER: We are off the record.

25 (A recess was taken.)

1 THE VIDEOGRAPHER: We're on the record.

2 BY MR. BUSH:

3 Q Good afternoon, Mr. Catizone. I want to ask you
4 some questions about some of the individual red
5 flags this afternoon. So the first ones are the
6 first ones in your report which are -- I guess we
7 call them the distance red flags. And as -- am I
8 correct that you've got two distance red flags?
9 One is where an opioid was dispensed to a patient
10 who traveled more than 25 miles to visit the
11 pharmacy.

12 That's one, right?

13 A Good afternoon, Mr. Bush. Could we go to the
14 page you're talking about? Are you talking about
15 page 32? Is that what you're referencing?

16 Q Actually on my supplemental copy, it's 33. But --

17 A 33. Okay.

18 Q Well, actually it starts on 32. You're right. The
19 definition, I think is on 33. It says opioid was
20 dispensed to a patient who traveled more than
21 25 miles to visit the pharmacy.

22 Do you see that?

23 A Yes, sir.

24 Q And the second distance one is that opioid was
25 dispensed to a patient who traveled more than

1 25 miles to visit their prescriber.

2 Do you see that?

3 A Yes, sir.

4 Q And I'm correct that the distance when you're
5 calculating -- or Mr. McCann was calculating
6 25 miles in each of these red flags, he was
7 measuring it from the center of the patient ZIP
8 Code to the center of the pharmacy ZIP Code for the
9 first red flag to the prescriber's ZIP Code in the
10 second, right?

11 A That's my understanding, sir, yes.

12 Q And did you direct him to do that it that way or
13 was that something he did on his own?

14 A I directed what the distance would be. How they
15 calculated that based on ZIP Code was something
16 that they came up with, sir.

17 Q Some of the prescriptions that flag here might
18 actually be a little less than 25 miles because the
19 actual addresses of the pharmacy and the patient
20 are -- where they are located in the ZIP Code,
21 right?

22 A Probably so, sir, yes.

23 Q And that's also true for the doctors -- or I
24 shouldn't say the doctors -- the prescribers and
25 the patient. Depending upon where the addresses

1 are within a ZIP Code, it could be flagging some
2 that are a little less than 25 miles?

3 A That would seem logical, yes.

4 Q Can you explain to me how you came up with 25 miles
5 as the distance measure?

6 A Sure. There were three primary sources of
7 information that I relied upon besides experience
8 that I've had in other cases. The first was
9 information that's available that says the average
10 distance that a patient travels to their pharmacy
11 is about five miles, and that the primary choice
12 for a patient's pharmacy is the accessibility and
13 closeness to their home or work. Included in that
14 data was information that for prescribers, patients
15 normally travel about the same distance, two to
16 three miles.

17 The other two factors were in the Holiday
18 case, the testimony of the witnesses in there
19 indicated that the red flag they looked at was less
20 than 30 miles, a little less than 30 miles. And
21 then the in the Walmart DOJ complaint, they noted
22 several distances in there from anywhere from
23 6 miles to 60 miles to a hundred miles. And
24 finally, the third piece of data that sort of
25 brought this all together for both the prescriber

1 and pharmacy was that when NABP was working with
2 the states to develop telepharmacy regulations, the
3 consensus of the states was that 25 miles from a
4 patient's home would be the approximate distance
5 for opening a telepharmacy or allowing a
6 telepharmacy to operate and practice. Because
7 within that 25-mile range, there would be ample
8 pharmacies for the patient to utilize, but outside
9 that 25-mile range, there would be no reason why,
10 if there wasn't access outside a 25, that a
11 telepharmacy should not exist and be able to
12 practice.

13 Q Okay. So let's talk about a couple of these
14 sources.

15 In Holiday, the patients who were filling
16 prescriptions at the pharmacy were coming from
17 Kentucky and from Tennessee, right?

18 A Some of the patients, yes, sir.

19 Q And some of the patients were coming from the
20 southern part of Florida, right?

21 A Yes, sir.

22 Q And the pharmacies were in the northern part of
23 Florida in Sanford, right?

24 A Yes, sir.

25 Q So you can agree with me that the actual fills of

1 patients that were at issue were for patients who
2 were well, well, well more than 25 miles from the
3 pharmacy?

4 MR. ELSNER: Objection.

5 A Not for all the patients. There were patients that
6 were noted in that case that traveled less than
7 30 miles to the pharmacy.

8 BY MR. BUSH:

9 Q And you think that's the basis of the decision?

10 A It's the --

11 MR. ELSNER: Objection.

12 A -- it's the basis for me using 25 miles as a
13 parameter.

14 BY MR. BUSH:

15 Q And in East Main Street, let me ask you to take a
16 look at -- let me find it.

17 MR. BUSH: Jason, it's actually CVS 3 in your
18 packages.

19 BY MR. BUSH:

20 Q Mr. Catizone, if you can pull that out, and then we
21 can also put it on the screen if Jason is back in
22 action.

23 MR. BUSH: Jason, are you with us?

24 Well, Jason appears not to be with us.

25 BY MR. BUSH:

1 Q Do you have that decision?

2 Do you have that decision, Mr. Catizone?

3 A Yes, sir.

4 Q And this is the East Main Street decision that is
5 one of the sources that you relied on?

6 A Yes, sir.

7 Q And take a look at page 2 about -- I'd say a little
8 less than halfway down the first column talking
9 about one of the patients who was filling
10 prescriptions at this pharmacy.

11 Do you see it says she traveled approximately
12 100 miles from Wheelersburg to Columbus and filled
13 the prescriptions at respondent, which is the
14 pharmacy, right?

15 A Yes, sir.

16 Q And a little further down, it says that one of the
17 patients who filled opioid prescriptions with the
18 pharmacy is approximately 64 miles from Columbus
19 where the pharmacy is located"?

20 A Yes, sir.

21 Q And then it says in Dayton and Portsmouth, Ohio,
22 they are 78 and 92 miles respectively from the
23 pharmacy, right?

24 A Yes, sir.

25 Q Not 25 miles?

1 A No, sir.

2 Q What's the -- can you explain why telepharmacy is
3 relevant at all to the distance that you would
4 establish for a distance metric for a retail
5 pharmacy?

6 A Yes, sir. In the deliberations with the states on
7 telepharmacy regulations, the states talked about
8 what is the approximate distance that a patient
9 would travel to a pharmacy. And what was a cutoff
10 point, where if a patient had to travel beyond that
11 point because there weren't any pharmacies
12 available to them, that the patient should have
13 access to remote services. And based upon
14 information from the states and looking at their
15 own pharmacies and demographics, 25 miles seemed as
16 a cutoff point that if a patient was within
17 25 miles of the pharmacy, they would utilize that
18 pharmacy. If it was beyond 25 miles and they chose
19 not to utilize that pharmacy, then that was a
20 problem.

21 Q So do you know how many of your red flags
22 prescriptions were filled by patients who were
23 between 25 and 30 miles from the pharmacy?

24 A No, sir.

25 Q Do you know how many were written by a prescriber

1 who was between 25 and 30 miles from the patient?

2 A No, sir.

3 Q Same answers for between 30 and 35 miles?

4 A Yes, sir.

5 Q And do you believe that 5 miles is a meaningful
6 difference in terms of identifying prescriptions
7 that are not written for a legitimate medical
8 purpose?

9 MR. ELSNER: Objection.

10 A I think you could be within 5 miles of a pharmacy
11 and still have a prescription that's not
12 legitimate. So the mile is a -- 25 is a parameter,
13 but anything can occur within 5 miles or 10 miles
14 of the pharmacy or prescriber.

15 BY MR. BUSH:

16 Q But by setting 25 miles, you're trying to identify
17 prescriptions that are likely to have been written
18 for an illegitimate medical purpose or to be
19 diverted, right?

20 A No, sir.

21 Q What are you trying to do?

22 A 25 miles presents a red flag which indicates to the
23 pharmacist that further diligence is needed on that
24 prescription because there could be diversion or
25 abuse or a problem.

1 Q Did you do anything to determine how far patients
2 go to fill nonopioid prescriptions?

3 A The data I looked at didn't break it down by
4 noncontrolled or controlled. It simply said within
5 a 2 to 3 miles or 5 miles is what patients utilize
6 their pharmacies for.

7 Q And the same for the prescriber metric?

8 A Yes, sir.

9 Q You would expect, would you not, that a certain
10 share of nonopioid prescriptions are filled at a
11 pharmacy that's more than 25 miles from the
12 patient's residence, right?

13 MR. ELSNER: Objection.

14 A Not really, sir, unless there were extenuating
15 circumstances.

16 BY MR. BUSH:

17 Q Well, forget what the explanation might be. You
18 would expect that a certain number or share of
19 nonopioid prescriptions would be filled at a
20 pharmacy that's more than 25 miles from the
21 patient's residence, right?

22 MR. ELSNER: Objection.

23 A Yes, sir.

24 BY MR. BUSH:

25 Q And you would also expect that a certain number of

1 nonopioid prescriptions were written by a
2 practitioner who was more than 25 miles from the
3 patient's residence, right?

4 A Yes, sir.

5 Q Would you also agree with me that there's,
6 therefore, a certain share of prescriptions that
7 are either filled at a pharmacy more than 25 miles
8 from the residence of the patient or written by a
9 prescriber more than 25 miles from the patient's
10 residence that are just normal patient behavior?

11 A Yes, sir.

12 Q Is one of the reasons that somebody might get a
13 prescription written by a doctor that's more than
14 25 miles from where he lives is that he goes to a
15 doctor that's near his place of work, right?

16 A Yes, sir.

17 Q And one of the reasons a patient might get a
18 prescription filled more than 25 miles from where
19 he works is because -- I'm sorry -- from where he
20 lives is because it's close to where he works,
21 right?

22 A Yes, sir.

23 Q And you haven't -- this red flag doesn't make any
24 effort to determine how many people were either
25 filling prescriptions at pharmacies or getting

1 prescriptions from practitioners more than 25 miles
2 from where they lived because the pharmacy or the
3 practitioner was near where they work? You don't
4 have any way to tell that?

5 MR. ELSNER: Objection.

6 Graeme, you may want to rephrase that.

7 MR. BUSH: Okay. Did I screw it up?

8 MR. ELSNER: Well, I heard it -- maybe I
9 misheard it.

10 MR. BUSH: I'll --

11 MR. ELSNER: I thought you said from where
12 they lived, not from where they worked. I think
13 that was the point you were trying to make.

14 MR. BUSH: I may have screwed it up. Let me
15 just do it over.

16 BY MR. BUSH:

17 Q Your red flag -- let's do it one at a time. Your
18 red flag for pharmacy distance doesn't make any
19 effort to determine how many people who filled a
20 prescription at a pharmacy more than 25 miles from
21 where they live did so because the pharmacy was
22 near where they work? You don't have any way to
23 tell that, right?

24 MR. ELSNER: Objection.

25 A Not from the data. That would be in patient notes

1 and other documentation that I was not provided.

2 BY MR. BUSH:

3 Q So you don't have any way to tell that?

4 A No, sir.

5 Q And you also don't have any way to tell whether any
6 prescription -- withdrawn.

7 You don't have any way to determine how many
8 people who filled -- who got a prescription written
9 by a prescriber who was more than 25 miles from
10 where they lived did so because the prescriber, the
11 doctor they went to, was near where they worked.
12 You don't have any way to tell that either?

13 A No, sir.

14 MR. BUSH: Jason, you can take down that
15 exhibit.

16 MR. ELSNER: Graeme, did you want to mark that
17 exhibit?

18 MR. BUSH: Yeah, I'm sorry. I did want to
19 mark that exhibit.

20 THE REPORTER: The last one we marked was
21 Exhibit 10. I didn't know if you wanted to mark
22 the spreadsheet.

23 MR. BUSH: I guess we ought to mark the
24 spreadsheet too. Sorry. I should have done it at
25 the time. I was thinking we didn't need to because

1 it was not really in hard copy. Let's do that. So
2 that will be 11, and this exhibit that was just up
3 here, the East Main Street decision will be 12.

4 (Exhibit 11 was marked for identification.)

5 (Exhibit 12 was marked for identification.)

6 BY MR. BUSH:

7 Q If you would look back at your report on page 32,
8 in the middle of the paragraph -- well, I guess
9 just after you start the paragraph under the
10 heading, it says:

11 "The exceptions can occur" -- and that's
12 exceptions to the distance metric -- "can occur
13 when an individual's drug coverage under their
14 insurance plan mandates certain pharmacies, the
15 pharmacy that they frequent is out of medication or
16 the patient is being treated by practitioners at a
17 tertiary care facility that is highly specialized
18 to provide services such as -- services such areas
19 as cardiac surgery, cancer treatment and
20 management, burn treatment, plastic surgery,
21 neurosurgery, and other complicated treatments or
22 procedures."

23 So you would agree that any of the
24 prescriptions that flag on your distance metrics
25 here that fall within those exceptions are not

1 really red flags, right?

2 MR. ELSNER: Objection.

3 BY MR. BUSH:

4 Q I'm sorry. What was your answer?

5 A Yes.

6 Q And you also say that "these exceptions did not
7 appear to be factors impacting the data."

8 Do you see that in the next sentence?

9 A Yes.

10 Q What's the basis for that conclusion?

11 A I had no documentation on patient notes or anything
12 else that indicate otherwise, and so based upon the
13 data, that was the only conclusion I could reach.

14 Q You would agree that there are going to be some
15 prescriptions that were flagged under these flags
16 that fall within these exceptions? You're just
17 saying that you can't identify them; is that right?

18 MR. ELSNER: Objection.

19 A Yes, sir.

20 BY MR. BUSH:

21 Q So let me ask you another question here. Let's say
22 that we have a prescription that is presented by
23 somebody who lives a thousand miles away from the
24 pharmacy. Would that flag?

25 A Yes, sir.

1 Q What if the patient is the child of somebody who
2 lives within the pharmacy's geographical area and
3 is known to the pharmacist and he's just home from
4 college where he got the prescription written.
5 That wouldn't be a red flag, would it?

6 A All those hypotheticals are possible, but that
7 would be documented in the record because a
8 pharmacist filling that prescription afterwards
9 didn't know that would question the mileage as a
10 red flag. So the documentation of that part would
11 be very important and critical.

12 Q So the only thing that's wrong with that scenario
13 is that the pharmacist didn't document it?

14 MR. ELSNER: Objection.

15 A No. What happened in that situation is the
16 pharmacist resolved the red flag by making a
17 determination that the individual, even though a
18 thousand miles away, was here on a visit from
19 college and, therefore, had a nexus to the pharmacy
20 and to the prescriber that took away that red flag
21 or resolved that red flag.

22 BY MR. BUSH:

23 Q And it's your opinion that, even if the pharmacist
24 knows the child and knows the family and they've
25 been getting prescriptions filled at the pharmacy

1 for years, knows the kid's away at school, that's a
2 red flag that has to be documented?

3 A Yes, sir.

4 Q Let me move to the next sets of red flags, which
5 was doctor and -- sorry. Got that wrong.

6 No, I'm sorry. Doctor and pharmacy shopping.
7 And those appear to be mentioned at page --
8 starting at page 35 on your report, if you want to
9 refer to that.

10 A Yes, sir.

11 Q So you defined red flag number -- I'm calling it
12 Number 3, the doctor shopping red flag, as a
13 patient who gets opioid prescriptions with
14 overlapping days of supply from two or more
15 prescribers.

16 Do I have that right?

17 A Yes, sir.

18 Q Okay. And just so that we're clear, I think we
19 probably all have a commonsense understanding of
20 what "overlapping" means, but just so that there
21 isn't any mix-up on this, would you please tell us
22 what you mean by "overlapping days of supply"?

23 A Yes, sir. That would mean that there would be an
24 overlap in between the two prescriptions so that
25 the patient would be taking both medications at the

1 same time.

2 Q Let me make sure I understand what you're saying.
3 In other words, the duration of the first
4 prescription is overlapped by the duration of the
5 second prescription?

6 A Yes, sir. Maybe I can give an example to better
7 explain.

8 Q Sure.

9 A So if a patient was on a pain medication, and let's
10 say they were on a 20-milligram medication and the
11 patient's pain was still severe. Then the
12 physician or prescriber would discontinue the
13 20-milligram prescription and then authorize a
14 30-milligram prescription and make sure that the
15 patient did not take any more of 20 milligrams but
16 then was using and taking 30 milligrams.

17 If they prescribed a 20-milligram and a
18 30-milligram and the patient was taking both at the
19 same time, that would be the overlap.

20 Q And in that situation, if the 20-milligram was not
21 working, the 30-milligram prescription might have
22 been written before the 20-milligram prescription
23 ran out because the patient needed additional
24 medication, right?

25 A It could be, sir, yes.

1 Q And it doesn't mean that the patient was taking
2 both? It could be that the patient stopped taking
3 the 20 and started taking the 30, right?

4 A Right. That's why it's a red flag to make that
5 determination and to document that determination,
6 sir.

7 Q But in that situation that you have just given us,
8 neither of the prescriptions is diverted to, you
9 know, a use other than what the prescriptions were
10 intended for, right?

11 MR. ELSNER: Objection.

12 A Yes, sir.

13 BY MR. BUSH:

14 Q And in neither of those situations were the
15 prescriptions written not for a legitimate medical
16 purpose, right?

17 A I wouldn't know exactly, sir. I couldn't comment
18 on it. They could have both been written for a
19 nonlegitimate purpose, if the patient wasn't being
20 truthful or something else was occurring with the
21 prescriber.

22 Q Right. But absent those additional pieces of
23 information, the mere fact that the person needed a
24 higher dose of medication doesn't mean that the
25 second prescription or the first prescription were

1 written for a nonlegitimate medical purpose. They
2 were both written for legitimate medical purposes,
3 right?

4 MR. ELSNER: Objection.

5 A Yes, sir. Could be.

6 BY MR. BUSH:

7 Q Do you know whether the numbers that you have set
8 forth in your report at page 35 for the doctor
9 shopping red flags include both the -- well, all of
10 the prescriptions that overlap?

11 A Yes, sir.

12 Q They do?

13 A Yes, sir.

14 Q You also say at page 35 -- hold on a second. Let
15 me find it.

16 And I'm reading from the first sentence under
17 "Doctor Shopping" that "Doctor shopping, as a red
18 flag, includes when a patient presents a
19 prescription for a controlled substance and may be
20 obtaining the similar or similar controlled
21 substance from a different prescriber and the
22 patient does not make the prescriber aware of the
23 other prescriber."

24 Do you see that?

25 A Yes, sir.

1 Q How is the pharmacist supposed to know whether the
2 patient made the second prescriber aware of the
3 first prescriber?

4 A As a red flag, the pharmacist would check the PDMP
5 to see whether or not it was the same prescriber
6 for the first prescription, ask the patient, check
7 with the prescriber, and then use their
8 professional judgment to determine whether or not
9 that prescription was for two of them.

10 Q So in this particular situation the numbers that
11 are flagged for each of the defendants here are
12 based solely on the dispensing data from each
13 defendant, right?

14 A Yes, sir.

15 Q So from each pharmacy defendants' own dispensing
16 data, they will be able to see -- the pharmacist
17 will be able to see, to use your hypothetical, that
18 the patient is presenting a 30-milligram
19 prescription and he has an overlapping supply with
20 the earlier 20-milligram prescription, right? That
21 information is available to the pharmacist in that
22 situation?

23 MR. ELSNER: Objection.

24 A If it's from the same pharmacy chain, yes. If it's
25 outside of that pharmacy chain, then that's where

1 the PDMP would be critical to review.

2 BY MR. BUSH:

3 Q So you've chosen -- withdrawn.

4 You've chosen two or more prescribers in this
5 metric. How did you settle on two?

6 A So if you see later in the report, later down under
7 "Pharmacy Shopping" where patients overwhelmingly
8 use this one pharmacy, the same is true for
9 patients. They generally use one physician. So
10 for a patient to see two prescribers for the same
11 medication is a red flag that I've discovered in my
12 experience and also that's been talked about in
13 various cases and decisions.

14 Q Do you have any understanding of what is
15 accepted -- an accepted definition of pharmacy
16 shopping among regulators?

17 MR. ELSNER: Objection.

18 A Yes, sir. The definition in my report is well
19 accepted by regulators.

20 BY MR. BUSH:

21 Q Do you know what the Ohio Board of Pharmacy defines
22 doctor shopping and pharmacy shopping to be?

23 A Not at this moment, sir.

24 Q And if the Board of Pharmacy in Ohio defines doctor
25 shopping and pharmacy shopping differently, is it

1 your opinion that the pharmacy defendants have to
2 comply with a stricter standard that you have
3 created here?

4 A My standard is not my standard. It's a standard
5 that the DEA has employed. And so if the DEA
6 standard or CSA is stricter than Ohio or the
7 pharmacy rules and regulations, the answer is yes,
8 the more stringent requirement prevails whether
9 it's federal or state.

10 Q And where do you see that there's a DEA 14
11 requirement -- if that's the way you put it or -- a
12 stricter rule or regulation from the DEA? What's
13 the source for that?

14 A My response was based on your hypothetical where
15 you asked if the Ohio Board of Pharmacy had a more
16 stringent or a less stringent definition than I
17 did, whether or not they would have to follow that.
18 So in the hypothetical that you gave me, I then
19 made the assumption that if the DEA had a more
20 stringent requirement, the more stringent would
21 take place.

22 Q Let's take a look at -- if you could get out CVS --
23 the package CVS 19 and CVS 17. And we'll mark
24 CVS 19 as -- I think the next exhibit, is that 13?

25 THE REPORTER: Yes, sir.

1 MR. BUSH: And CVS 17 as the following
2 exhibit, 14.

3 (Exhibit 13 was marked for identification.)

4 (Exhibit 14 was marked for identification.)

5 A Yes, sir, I have those open.

6 Q Thank you.

7 MR. BUSH: So Jason, can you put CVS 19 up on
8 the screen, please? All right. And I'd like
9 you -- so if you could, show Mr. Catizone -- well,
10 actually, you don't have it up on the screen yet.
11 Hold on a second.

12 While we're waiting for it to get up on the
13 screen, Mr. Catizone, let me ask you to take a look
14 at Exhibit 13. You'll see that this is the Ohio
15 Automated Rx Reporting System Semiannual Report on
16 Opioid Prescribing in Ohio dated June 2015.

17 Do you see that?

18 A Did you say 13 and I'm ignoring 17 and 19 now and
19 switching to 13?

20 Is that what you said?

21 Q No, those were our folder numbers. Those are not
22 the exhibit numbers.

23 A So is this still folder 17 and folder 19?

24 Q Folder 19 has Exhibit 13 in it. So that's the --
25 sorry. The numbers are a little confusing.

1 A Thank you.

2 Q So do you have that?

3 A Yes, sir.

4 Q All right. And if you turn to the second-to-last
5 page, section 3, and down at the bottom, it says
6 "OARRS usage versus doctor shopping by year."

7 Are you with me?

8 A Yes, sir, yes, sir.

9 Q All right. And at the bottom it says -- the little
10 asterisk says: "In this chart a doctor shopper is
11 defined as an individual who visits at a minimum
12 five prescribers and five pharmacies in a single
13 month."

14 MR. BUSH: Further down, Jason. Further down.
15 Bottom of that page. So highlight the italics at
16 the very bottom of the page. Yep.

17 BY MR. BUSH:

18 Q So that -- Mr. Catizone, that's a very different
19 definition of doctor shopping than the one you
20 used, which is just two prescribers in one month,
21 right?

22 MR. ELSNER: Objection.

23 A Yes, it's different, sir.

24 BY MR. BUSH:

25 Q Okay. And do you think that pharmacists and

1 pharmacies that are operating in Ohio, which is
2 subject to the Ohio State Board of Pharmacy should
3 have to comply with your much more restrictive
4 definition of doctor shopping than what the
5 regulator uses?

6 MR. ELSNER: Objection.

7 A The definition that I included in my report as a
8 red flag that would indicate that the pharmacist
9 has to do some additional diligence, again, is
10 based upon my experience and other actions that the
11 DEA has taken in these cases. So it's up to the
12 pharmacist to decide whether they want to take
13 action and follow Ohio or DEA. But by following
14 Ohio it, subjects them to action by the DEA or DOJ,
15 and that would be up to the individual pharmacist.

16 BY MR. BUSH:

17 Q Have you seen -- can you cite any decision or
18 guidance from the DEA that says two doctors in one
19 month is a definition of doctor shopping?

20 A Not offhand, sir.

21 Q All right. Let me ask you to take a look at
22 Exhibit 14, which is the next exhibit that you
23 marked here. And that is the OARRS 2016 Annual
24 Report.

25 A Excuse me, Mr. Bush. Is that CVS folder 14 or

1 Exhibit 14?

2 Q No, that's CVS folder 17.

3 A Okay. That says June --

4 Q Maybe I have the -- maybe I have it wrong.

5 A It's the 2017, it's not 2016, sir.

6 MR. BUSH: Jason, can you please pull that up,
7 because I'm not sure that what we're actually using
8 here are the ones that I have here in hard copy.

9 Nope. It's Folder Number 17. All right.

10 Actually, we can just pass on that. Just leave
11 that one alone.

12 BY MR. BUSH:

13 Q At page 36 of your report, if you take a look at
14 that.

15 A Yes, sir.

16 Q You cite -- maybe it's not 36. Sorry. It's 37.
17 You cite as support for your doctor and pharmacy
18 shopping metric of two pharmacies or two doctors
19 that the NABP stakeholder report says, and I quote,
20 "Patient presents a prescription for controlled
21 substance that a pharmacist knows or reasonably
22 believes that another pharmacy refused to fill."

23 Do you see that?

24 A No, sir, I don't. What page are you on?

25 Q 37, top of page 37.

1 A Oh, yes, I do. Thank you.

2 Q Okay. That stakeholder report, I think others will
3 ask you some questions about that. But that was a
4 document that the NABP helped put together, right?

5 MR. ELSNER: Objection.

6 A Yes, sir.

7 BY MR. BUSH:

8 Q And that doesn't really say anything about two
9 pharmacies or two doctors?

10 MR. ELSNER: Objection.

11 A Correct, sir.

12 BY MR. BUSH:

13 Q Let me ask you a question.

14 Do you agree or disagree with the following
15 statement: "Multiple prescribing can indicate
16 individuals who are recklessly seeking opioids for
17 nonmedical personal use and sale or could be
18 indicative of poorly managed care"?

19 Do you agree or disagree with that?

20 MR. ELSNER: Objection.

21 A I can agree with that, sir.

22 BY MR. BUSH:

23 Q I'm sorry. You say can or cannot?

24 A Can. Yes.

25 Q I'm sorry, I still didn't hear you clearly. Cannot

1 or can?

2 A I can, can, c-a-n.

3 Q Thank you, appreciate it.

4 And if it's indicative of poorly managed care,
5 then the prescription that would qualify for
6 multiple prescribing would not be a prescription
7 written for nonmedical purpose?

8 A Correct.

9 Q Let me ask you about your combination red flags.
10 And by my read, those are red flags 5, 6, 7, and 8,
11 and these are sometimes referred to as cocktail
12 prescriptions, right?

13 A Yes, sir.

14 Q And those are combinations -- and you have various
15 different combinations here -- but prescription
16 opioid, a benzodiazepine, and a muscle relaxer or
17 maybe just a prescription opioid and a
18 benzodiazepine. I think those are the two basic
19 combinations that your red flags focus on here; is
20 that right?

21 A Yes, sir.

22 Q And bear with me for a second.

23 At page 37 of your report -- I think it's
24 page 37. Let's make sure the page hasn't changed
25 here.

1 So I think you're talking here about the
2 prescription combination of an opioid, a benzo, and
3 a muscle relaxer. And there are two different red
4 flags here. The first one is for overlapping days
5 of supply, and the second one is written by the
6 same prescriber and filled by the pharmacy on the
7 same day.

8 Is that right? Are you with me?

9 A Yes, sir.

10 Q And you say up above at the top of the page, first
11 full sentence, "The red flags indicated that the
12 prescriptions were not issued for a legitimate
13 medical purpose or in the usual course of pharmacy
14 practice."

15 Do you see that?

16 A Yes, sir.

17 Q You are aware, are you not, that medical
18 practitioners do believe that in some circumstances
19 these combinations are legitimate and necessary to
20 treat medical conditions of patients?

21 A I'm not aware of any medical practitioner that has
22 voiced that opinion, sir.

23 Q Okay. And I'm looking for something that I wanted
24 to ask you about you said in here.

25 Right.

1 So at the bottom of the same paragraph, you
2 say: "Further, there were additional red flags
3 present including but not limited to excessive
4 quantities and the duration of therapy outside of
5 recommended dosages and dosing to further concern
6 and alert the pharmacist."

7 Do you see that?

8 A Yes, sir.

9 Q Do all of the prescriptions that flag in red flags,
10 these combination red flags 5 through 8 involve
11 excessive quantities?

12 MR. ELSNER: Objection.

13 A Not for all the red flags, sir.

14 BY MR. BUSH:

15 Q Some of them do?

16 A Not for all of the prescriptions, sir.

17 Q But some do?

18 A Yes, sir.

19 Q And have you identified which ones do?

20 A No, sir. I looked at the aggregate data, not the
21 individual prescriptions.

22 Q And do all of the prescriptions that flag in red
23 flags 5 through 8 involve excessive duration of
24 therapy outside recommended dosages and dosing?

25 A No, sir.

1 Q So you've already said you don't agree that there
2 are any legitimate uses for these combinations, and
3 I want to go back and just make sure what you're
4 referring to here.

5 Is this for all four of -- actually, it's
6 really two combinations. It's just measuring them
7 differently. But for both of the combinations that
8 you're talking about, there's no legitimate use for
9 them?

10 MR. ELSNER: Objection.

11 BY MR. BUSH:

12 Q Did I not ask that -- ask that question very well?

13 MR. BUSH: Mike, you are frowning at me. Let
14 me let go back. I'll try it again.

15 MR. ELSNER: You kind of mixed the two
16 different combinations with the -- with how they
17 are calculated, so I think if you get it out -- we
18 will be clear.

19 BY MR. BUSH:

20 Q All right. So what I'm curious about here, let's
21 take the opioid, the benzo, and a muscle relaxer.
22 So you've got two red flags that focus on those.

23 I think you've already said that, in your
24 view, there's no legitimate medical use for that
25 combination; is that right?

1 A Yes, sir.

2 Q All right. So why would -- why is there a standard
3 for the duration of the therapy if it's never
4 appropriate? How would the -- any duration is too
5 much, right?

6 A Not for that combination collectively, but for the
7 individual drugs that were included in the
8 combination, there's a duration of therapy for
9 those individual drugs.

10 Q Okay. So that's what you meant when you said the
11 duration of therapy was excessive?

12 A For those or it could have been that the amount of
13 medications that were prescribed as a combination
14 was excessive as well.

15 Q All right. And I take it you cannot describe for
16 me -- well, I'm sorry. Let's go to the second set.

17 The second set are an opioid and a
18 benzodiazepine.

19 Do you see that?

20 A Yes, sir.

21 Q Okay. And is it also your opinion that there is no
22 legitimate medical reason to prescribe those two
23 drugs in combination?

24 A No, sir.

25 Q It's not your opinion?

1 A No, sir.

2 Q So there are situations where that's a legitimate
3 medical prescription?

4 A Yes, sir.

5 Q And how do we, in your red flags, identify which of
6 the combinations of prescriptions are legitimate
7 and which ones aren't?

8 A Again, the pharmacist's due diligence to ascertain
9 that there was a legitimate need for these
10 prescriptions and documentation of that resolution.

11 Q Does the timing of when the prescriptions were
12 filled make a difference in making that assessment?

13 A It would be a factor that would help the pharmacist
14 decide as well, sir.

15 Q And does the timing make a difference in
16 determining whether it's even a red flag?

17 A No, sir. The two combined are a red flag.

18 Q What if the benzo prescription is filled with only
19 one day left and the opioid prescription. That's
20 still a red flag?

21 A Again, that would be, in that hypothetical,
22 something for the pharmacist to make sure that was
23 resolved so the patient didn't take both
24 medications at the same time.

25 Q So let me go back and ask the question again. Is

1 it still a red flag?

2 A Yes, sir.

3 Q Okay. Doesn't matter if the overlap of the
4 prescription is one day, two days, three days, as
5 opposed to they were filled at the same time and
6 they completely overlapped to you?

7 MR. ELSNER: Objection.

8 A If you look at the patient's health, and if that
9 combination caused the patient to have respiratory
10 failure or die, and it could happen with just a
11 combination of two doses, then it's a red flag that
12 the pharmacist needs to resolve.

13 BY MR. BUSH:

14 Q All right. But in that a situation, it might be a
15 danger to the patient, but it would not be an
16 illegitimate prescription, right?

17 MR. ELSNER: Objection.

18 A Hypothetically, yes, it could not be.

19 BY MR. BUSH:

20 Q Do you have any idea how many prescribers prescribe
21 this combination of drugs? And by "this," I'm
22 referring to an opioid and a benzodiazepine in the
23 two counties, Lake and Trumbull County?

24 A No, sir.

25 Q Would it trouble you, if, say, 200 or 300

1 prescribers write this combination of
2 prescriptions?

3 A I'm deeming by trouble -- I'm -- I'm just trying to
4 answer best for you.

5 Q Well, let me ask it differently.

6 Do you think that 2- or 300 prescribers in
7 Lake and Trumbull County are writing prescriptions
8 not for a legitimate medical purpose?

9 MR. ELSNER: Objection.

10 A I thought that would help, but I actually have
11 become more confused, so I --

12 BY MR. BUSH:

13 Q So the hypothetical is there there's 2- or 300
14 prescribers in Lake and Trumbull County who are
15 writing prescriptions for an opioid and the
16 benzodiazepine. That's the hypothetical.

17 A Okay.

18 Q Do you believe in that hypothetical that 2- or 300
19 doctors or prescribers are writing prescriptions
20 not for a legitimate medical purpose?

21 MR. ELSNER: Objection.

22 A No.

23 BY MR. BUSH:

24 Q Would your answer to that question be the same for
25 the Trinity, if you -- hypothetical is that several

1 hundred doctors in the two counties write
2 prescriptions for the Trinity that flag on your two
3 Trinity red flags. And do you believe that that
4 many doctors writing those prescriptions are
5 writing them for -- not for a legitimate medical
6 purpose?

7 MR. ELSNER: Objection.

8 A My first answer is yes. The second answer would be
9 perhaps the prescriber was incompetent and didn't
10 realize that that was not a legitimate medical
11 purpose, but overall the answer would be yes, those
12 are not issued for legitimate medical purposes.

13 BY MR. BUSH:

14 Q And, to your knowledge, are there any proceedings
15 in Ohio to discipline the 2- or 300 doctors in my
16 hypothetical who were writing prescriptions that
17 trigger on your Trinity red flags?

18 MR. ELSNER: Objection.

19 A Not that I'm aware of, but in a hypothetical, I
20 would just suspect that there probably would be
21 some.

22 BY MR. BUSH:

23 Q But you don't have any knowledge as you sit here
24 today whether there's even one disciplinary
25 proceeding against a doctor for writing that

1 particular combination, do you?

2 MR. ELSNER: Objection.

3 A Not in a hypothetical, I don't.

4 BY MR. BUSH:

5 Q Well, in actual life, you don't have -- forget the
6 hypothetical aspect of it. You don't know if any
7 prescriber who is being disciplined in Ohio for
8 writing the combination -- the Trinity combination
9 that your red flag flagged?

10 A If you could identify them, I could help you with
11 that, but I know Dr. Volkman was disciplined for
12 writing that combination in Ohio.

13 Q We're talking about the two counties, Lake and
14 Trumbull County.

15 A I don't have any knowledge of that, sir.

16 Q Let me ask you about next red flag, which is two
17 short-acting -- hold on. I've got to find it.

18 So this is the red flag that is identifying
19 two short-acting opioids on the same day, and
20 that's at page 41, I believe, of your report.

21 Are you with me?

22 A Yes, sir.

23 Q Okay. I have, I think, only a couple of questions
24 on this one.

25 Do you know whether in order to identify the

1 numbers of prescriptions that flag under this
2 particular flag, it is necessary to refer to a
3 prescription that is excluded from your
4 computations because of the changes you made after
5 the judge's order?

6 MR. ELSNER: Objection.

7 A No, I don't, sir.

8 BY MR. BUSH:

9 Q Okay. So you don't know how Mr. McCann actually
10 calculated these and whether he relied on both
11 prescriptions that are in the universe of
12 prescriptions that you were purporting to red flag
13 in addition to prescriptions that are outside of
14 that universe because of your reaction to the
15 judge's order?

16 MR. ELSNER: Objection.

17 A I know Mr. McCann is an expert witness in this
18 case, and he would be better able to answer that
19 question. I can't answer that question, sir.

20 BY MR. BUSH:

21 Q I take it you did not instruct him not to use any
22 prescriptions that were excluded from consideration
23 by the plaintiffs' decision about how to deal with
24 the judge's order? You didn't instruct him in that
25 way at all?

1 MR. ELSNER: Objection.

2 A I gave no instructions to Mr. McCann, but I'd
3 assume that he would follow the order of the Court
4 and it wouldn't be a necessary direction to give to
5 him.

6 BY MR. BUSH:

7 Q Let's take a look at your red flags under excessive
8 dispensing, which I think begins on page 43. And
9 as I understand this -- and I'm going to direct
10 your attention to page 45 of your report. It says
11 you've done two different calculations here. A
12 patient was dispensed and opioid prescription of
13 over 200 MME per day before 2018 or over 50 MME per
14 day after January 1st 2018, right?

15 A Yes, sir.

16 Q And then you've also done a calculation of
17 prescriptions when a patient was dispensed an
18 opioid prescription over 200 MME per day before
19 2018 and 90 MME per day after January 1st, 2018,
20 right?

21 A Yes, sir.

22 Q Why did you use 2000 MME as the test through 2017?

23 MR. ELSNER: Objection.

24 A 200 MME, sir not 2000.

25 BY MR. BUSH:

1 Q I'm sorry, I misspoke. Let me ask it again.

2 Why did you use 200 MME for these two red
3 flags through 2017?

4 A That was a guideline issued by the Centers for
5 Disease Control.

6 Q And where was that issued? In what document does
7 that show up?

8 A It is in the -- probably the list of documents,
9 but -- I can go through and try to find it. But it
10 was something that the CDC released from their
11 website and on their website.

12 Q Okay. And why did you use 50 MME in one of these
13 red flags and 90 MME in the other?

14 A Again, the CDC published information that indicated
15 that the dosage for opioids because of their
16 accessibility to harm needed to be lowered for the
17 200 down to the 50 and even the 20 in some cases.

18 Q Do you agree that 200 MME per day was considered a
19 safe dosage prior to 2018, given the guidance that
20 you're referring to?

21 MR. ELSNER: Objection.

22 A Based upon the information, people thought that was
23 a safe dosage, yes, sir.

24 BY MR. BUSH:

25 Q And then after 2000 -- as you say, after 2017, that

1 guidance changed and the consensus was that safe
2 dosage was 50 MME per day?

3 A 50 or 90 MME, sir.

4 Q Was that because there's difference guidance that
5 had different standards or was 50 applied in one
6 set of circumstances and 90 applied in another or
7 some other reason?

8 A If I can refer you to my report on page 44, the
9 first full paragraph. I think it's the second
10 sentence that said "Compared with dosages of 1 to
11 less than 20 MME per day, dosages of 50 to less
12 than 100 MME per day were found to increase risk
13 for opioid overdose by factors of 1.9 to 4.6 with
14 absolute risk differences approximation of
15 0.15 percent for fatal overdose and 1.4 percent for
16 any overdose. Dosages of 100 MME or more per day
17 were found to increase risk for opioid overdose by
18 factors of 2.0 to 8.9, relative to dosages of 1 to
19 less than 20 MME per day with absolute risk
20 differences approximation of 0.25 percent for fatal
21 overdose and 4.04 percent for any overdose."

22 It continues and it's referenced there as
23 Footnote Number 94. And that's why the
24 determination was made. And that references the
25 CDC guideline for prescribing opioids for chronic

1 pain, United States, 2016.

2 Q So the studies that you just read about did not
3 really set the standard that you used here, because
4 they're talking about different MME per-day dosage
5 limits. The standard was set -- and I'm asking
6 you -- for your purposes by the CDC guidelines in
7 2016?

8 A Based upon my experience and my involvement in
9 these issues, I used that 90 MME as a guideline for
10 red flags in my report and what pharmacists should
11 use as a guideline as well.

12 Q Was that what you understood was in use throughout
13 the medical profession by prescribers in deciding
14 what dosage levels to prescribe?

15 A It's what should have been in place for prescribers
16 based upon the literature and based upon
17 recommendations from the CDC.

18 Q So it's what should have been but not what was in
19 place.

20 Is that what you're saying?

21 A I didn't say it was not. I don't know if it was or
22 not. I just know what the recommended standards
23 were and should be.

24 Q Okay. Did you review the particular drugs that
25 were flagged by these two red flags, 10 and 11?

1 MR. ELSNER: Objection.

2 A I know that if it contained -- if it was an opioid
3 and contained an opium or the measure for an MME,
4 it was a drug included, but I'm not sure whether
5 the combination was -- how that was divided up.

6 BY MR. BUSH:

7 Q And would you agree that some forms of the drug are
8 less likely to be diverted than others?

9 A No.

10 Q So a patch is just as easily diverted as a pill?

11 A If a potential for abuse for those products is the
12 same because they are in Schedule II, then any
13 product in Schedule II has the same abuse potential
14 and abuse for diversion, same if it was in a
15 Schedule III. So if those products were comparable
16 on those schedules, they would have the same
17 comparable risk.

18 Q So you're making no independent judgment about
19 this. You're just saying if they are on the same
20 schedule, then they are equally likely to be
21 diverted?

22 A That's what the schedules are for, sir. That's how
23 they were devised and the purpose for the
24 schedules.

25 Q Do you know whether patches are more easily or more

1 difficult -- do you know whether patches are more
2 difficult to divert?

3 MR. ELSNER: Objection.

4 A I don't know, but I know the fentanyl patches are
5 the more deadly and have killed probably
6 percentagewise more people than some of the other
7 opioids.

8 BY MR. BUSH:

9 Q Are you aware that the FDA has found that there's
10 no maximum dose for opioid analgesics because
11 there's no ceiling effect for the analgesia?

12 A I was not aware of that, sir.

13 Q So you don't agree or disagree with that?

14 MR. ELSNER: Objection.

15 A I'm not aware of it, sir. I really can't say
16 whether I agree or disagree. I would have to see
17 that whole study, see where you're taking that
18 from, and see what the other information was for me
19 to render an opinion.

20 BY MR. BUSH:

21 Q Do you agree that there are some conditions that
22 require higher doses of opioids and higher MMEs
23 like cancer?

24 A Yes, sir.

25 Q Hospice care?

1 A Yes, sir.

2 Q Sickle cell anemia?

3 A Yes, sir.

4 Q So let me ask you a question about what you
5 characterized as a pattern prescribing. And I
6 think your report on this begins on page 47 -- 46.

7 A I see.

8 Q So in particular, on these same hour prescribing,
9 which is described on page 47, it says "An opioid
10 was dispensed to at least three different patients
11 within an hour and the opioid prescriptions for the
12 same base drug, strength, and dosage form were
13 written by the same prescriber."

14 Do you see that?

15 A Yes, sir.

16 Q How was the time decided, the one-hour time
17 decided?

18 A That was something that was addressed by
19 Mr. McCann.

20 Q Do you know how he did it?

21 A No, sir.

22 Q Do you know what data fields he used to do it?

23 A No, sir.

24 Q Do you know whether he made any assumptions about
25 times because the data really wasn't in the data

1 fields for him?

2 MR. ELSNER: Objection.

3 A No, sir.

4 BY MR. BUSH:

5 Q And do you know what the data fields reflected in
6 terms of the time -- what time is reflected in the
7 data fields?

8 MR. ELSNER: Objection.

9 BY MR. BUSH:

10 Q Let me put it differently.

11 Do you know what's reflected in the data
12 fields for CVS as the time the prescription was
13 given to the pharmacist, the time the prescription
14 was picked up by the patient, or some other time?

15 MR. ELSNER: Objection.

16 A I don't know what the times were, sir.

17 BY MR. BUSH:

18 Q So both of these prescription -- excuse me. Both
19 of these red flags talk about prescribing to a
20 number of different patients, either in the case we
21 were just talking about, within an hour, or with
22 respect to the first pattern prescribing red flag,
23 four different patients on the same day. Can you
24 think of any situations where it would be
25 appropriate for a prescriber to write the same

1 prescription for multiple of his patients?

2 A Very rare circumstances, sir.

3 Q But you can think of some?

4 A Very limited.

5 Q What are they? What can you think of?

6 A If a patient had a vitamin deficiency and the
7 prescriber wrote for multiple patients to take the
8 same multivitamin, that would be one instance.

9 Q How about for opioid prescriptions? Can you think
10 of any reason that you'd give the same prescription
11 to multiple patients for opioid?

12 A No, sir.

13 Q How about if you have a surgical practice and you
14 do a kind of routine surgery?

15 A Again, I think it's possible, but in looking at
16 opioid and how the abuse potential differs for each
17 patient, and the assessment should be done of that
18 patient's potential, it's hard for me to conceive
19 that every patient should receive the same
20 quantity, the same strength, and the same number of
21 opioids.

22 Q So if we had a medical professional come in and say
23 there are situations in which you would have a
24 practice or a physician who prescribed fairly
25 consistently the same opioid prescription for his

1 patients because they are all getting the same
2 treatment, would you disagree with that?

3 MR. ELSNER: Objection.

4 A I would say that's probably -- that's not
5 appropriate therapy and probably one of the main
6 reasons why we have such a big problem with opioids
7 today.

8 BY MR. BUSH:

9 Q So you think that doctor ought to be disciplined?

10 MR. ELSNER: Objection.

11 A If he violated the laws in that state and also what
12 the DEA notes would conclude, most certainly, yes,
13 sir.

14 BY MR. BUSH:

15 Q So one of the -- withdrawn.

16 These red flags are based on when the
17 prescription is dispensed, right, dispensed from
18 the same day or within an hour, right?

19 A I believe so, sir, yes.

20 Q So this is going to capture patients who got
21 prescriptions written on different days but
22 happened to fill them on the same day, right?

23 A Yes, sir.

24 Q And this is another series of red flags where I
25 have to ask you whether or not you used

1 prescriptions from the original red flags that
2 you've now eliminated from your red flags analysis
3 in order to meet the four-plus patient test or
4 three-plus patient test in red flags -- these two
5 red flags.

6 MR. ELSNER: Objection.

7 BY MR. BUSH:

8 Q I take it you're going to tell me you don't know?

9 A I will give you the same answer. I would assume
10 that they did, but I don't know for certain, sir.

11 Q But you would assume that they were using in order
12 to get -- let's pick four patients on the same day
13 with the same prescription -- that they are using
14 some prescriptions that were in your original red
15 flag analysis but are no longer in your red flag
16 analysis in order to get to four?

17 MR. ELSNER: Objection.

18 A I would say again, I don't know, and I think that
19 that would be violative of what the court order
20 was, so I don't think they would be able to do
21 that, sir.

22 BY MR. BUSH:

23 Q Okay. And same answer for the three-plus patient
24 test for -- excuse me -- Red Flag 13?

25 MR. ELSNER: Objection.

1 A Okay.

2 BY MR. BUSH:

3 Q Have you given any thought to how CVS or any of the
4 other pharmacy defendants would actually
5 operationalize these tests to know whether four
6 patients are filling on the same day from the same
7 prescriber?

8 A Yes, sir.

9 Q How would they do that?

10 A They could build alerts into their dispensing
11 system so that if a red flag manifested, they would
12 be able to then to alert the pharmacist, and the
13 pharmacist would be able to pause in that process
14 and conduct due diligence.

15 Q And do you know whether the systems that these
16 pharmacy companies have are able to have this
17 information available in real-time in the sense
18 that the minute I fill a prescription, it's already
19 in the system and somebody else can see it
20 immediately? Do you know whether that's possible?

21 MR. ELSNER: Objection.

22 A I don't know if it's possible for all the
23 defendants, sir, no.

24 BY MR. BUSH:

25 Q And does this -- do these red flags flag all of the

1 prescriptions that are in the combination of four
2 or three, as you understand it?

3 A As I understand it, yes, sir.

4 Q They do.

5 But the pharmacist who fills the first three
6 prescriptions or the pharmacy company that fills
7 the first three prescriptions -- withdrawn.

8 The pharmacy company that fills the first
9 three of the prescriptions in your red flag that
10 requires four doesn't know that there's going to be
11 a fourth prescription coming in, right?

12 How can they not fill those first three
13 prescriptions?

14 A If they don't have the information and don't fill
15 it, when the fourth prescription is filled, they
16 then know and know that they shouldn't fill any
17 more prescriptions for that patient.

18 Q Right. But the first three they should have
19 filled, because they haven't hit four yet, right?

20 A Unless there were other red flags associated with
21 that prescription.

22 Q Well, let's focus on this red flag. On this red
23 flag, if they didn't know about the fourth, they
24 should have filled the first three, right?

25 MR. ELSNER: Objection.

1 A Hypothetically, yes, sir.

2 BY MR. BUSH:

3 Q And that's also true for the three-plus within one
4 hour? If they haven't gotten the third, they go to
5 fill the first two?

6 MR. ELSNER: Objection.

7 A Same logic, same reply, sir. But once they fill
8 the fourth prescription, all four of those
9 prescriptions are not for a legitimate medical
10 purpose. That should be noted by the pharmacy and
11 by the company.

12 BY MR. BUSH:

13 Q What can the pharmacist do about that?

14 A They can alert the board of pharmacy. They could
15 provide notices and documentation of the patient
16 and prescriber's file. They could also notify the
17 DEA.

18 Q How do they know it's not for a legitimate medical
19 purpose? You yourself have said that some of these
20 prescriptions in all of your red flags are probably
21 written for a legitimate medical purpose. So just
22 because it happens to flag, that doesn't mean it is
23 not written for a legitimate medical purpose,
24 right?

25 MR. ELSNER: Objection; mischaracterizes the

1 testimony.

2 You can answer.

3 A So in your hypothetical, you said that they had
4 reached the tenet of four prescriptions that would
5 verify and credential that as a red flag and
6 problematic. So if it's credentialed by those four
7 prescriptions, then the pharmacist's due diligence
8 would occur and probably ascertain that it was not
9 for a legitimate medical purpose.

10 BY MR. BUSH:

11 Q There's nothing they can do to get the
12 prescriptions back, the ones that they filled
13 before it hit four, before it hit three?

14 A No, sir.

15 Q So let's look at the red flag. It's a 210-day
16 supply in a six-month period. So that begins I
17 think on page 49.

18 Are you with me?

19 A Yes, sir.

20 Q Would you agree that this kind of a pattern is
21 likely to be for a patient who is on some kind of
22 long-term opioid therapy?

23 A For the exceptions that you presented before, a
24 cancer patient, a hospice patient, yes.

25 Q Could it be for a chronic pain patient?

1 A It's not recommended for chronic pain patients.
2 The literature says that there should be nonopioid
3 treatment as well as nonmedication treatment for
4 that type of chronic pain.

5 Q All right. But is it -- is it your opinion that a
6 course of opioid therapy that goes on for a
7 six-month period is -- to treat chronic pain is not
8 for a legitimate medical purpose?

9 A No. It's something that has to be closely
10 monitored, and it's outside the recommended
11 dosages, and the pharmacist would have to resolve
12 that in order to protect the patient from harm or
13 addiction.

14 Q Right. But it's still written for a legitimate
15 medical purpose?

16 A In the context, yes, sir.

17 Q And in a situation like this, a pharmacist,
18 especially in the metrics that we're using here,
19 because this is all based on each individual's --
20 individual defendant's dispensing data, the
21 pharmacist would have filled prescriptions each
22 month during this period for the person who was
23 getting this long-term opioid therapy, right?

24 A Yes, sir.

25 Q And he or she would know who the prescriber was,

1 right?

2 MR. ELSNER: Objection.

3 A If the information was entered correctly, yes, sir.

4 BY MR. BUSH:

5 Q And you can see if the dosage or the drug
6 formulation had changed during that period of time
7 in any way that caused concern or if it had
8 remained stable, right?

9 MR. ELSNER: Objection.

10 A I'm sorry. Could you explain it further? I didn't
11 follow that.

12 BY MR. BUSH:

13 Q Okay. The pharmacist who's filling prescriptions
14 over this six-month period would see if the dosage
15 changed during the period, right?

16 MR. ELSNER: Objection.

17 A Correct, yes, sir.

18 BY MR. BUSH:

19 Q And would also see if the form -- the form of the
20 drug had changed?

21 A I'm sorry. What do you mean by "form of the drug"?

22 Q They took a different strength of the drug or --

23 A Oh.

24 Q Yeah.

25 A Yeah. That would be information provided to the

1 pharmacist.

2 Q And all of this information is available to the
3 pharmacist in the normal course by looking at the
4 patient profile, right?

5 MR. ELSNER: Objection.

6 A Depending on the system, yes, sir.

7 BY MR. BUSH:

8 Q And in this particular red flag, somebody could be
9 on a long-term course of therapy with opioids, and
10 if they're -- the prescription, the last
11 prescription they got happened to be two days
12 before the end of the 210-day supply metric, it
13 would flag under your red flag analysis, right?

14 Not -- not following me?

15 A I'm sorry, sir. I -- I'm trying to --

16 Q I'm probably not asking you a good question. Let
17 me ask --

18 A Prior to that time, there would be a red flag for
19 the pharmacist to look at that patient's therapy
20 because Ohio law requires when dispensing opioids
21 that a physical and psychological assessment and
22 monitoring be done throughout the process.

23 So anything that reached more than the three
24 months or four months or five months, the
25 pharmacist would -- should be monitoring and having

1 discussions with the prescriber and patient.

2 Q Okay. Let's leave that aside for a minute. Now I
3 just want to focus on what triggers the red flag
4 here, and I'll try and ask a better question about
5 this.

6 So if somebody is getting a monthly
7 prescription for long-term opioid therapy, and the
8 last prescription that he gets happens to be a
9 couple of days before the 210 days' supply expires,
10 that's going to trigger this red flag, right?

11 A I'll try to give you a better answer.

12 Q Okay.

13 A Yes, for purposes of the aggregate data, yes.

14 Q Okay. And it might be nothing more than an anomaly
15 that it was filled or presented two days before the
16 end of the 210th day period. It's really just a
17 continuation of the long-term opioid therapy. It's
18 not a red flag?

19 You would agree with that?

20 A I think anything's possible. That's a possible
21 scenario.

22 Q Let's look at the last red flag you have here,
23 which is Red Flag 16. It's when a patient pays for
24 an opioid prescription with cash, right?

25 A Yes, sir.

1 Q Are there reasons that a patient may pay in cash?

2 Good reasons?

3 A I'm sure there are, sir, yes.

4 Q Can you tell me ones you can think of?

5 MR. ELSNER: Objection.

6 A One of the obvious would be if they don't have
7 insurance.

8 BY MR. BUSH:

9 Q Okay. Anything else?

10 A That's all that immediately comes to mind.

11 Q Okay. One of the -- I think in your report, you
12 say that "The likelihood of diversion increases in
13 circumstances in which the patient pays for an
14 opioid prescription with cash when they otherwise
15 have insurance."

16 Do you see that? I'm sorry. It's on page 50
17 of your report.

18 A Yes, sir.

19 Q All right. This Red Flag 16 did not identify
20 situations where the person who paid with cash did
21 have insurance, correct?

22 A Correct.

23 Q It's all cash payments, whether you have insurance
24 or not?

25 A Yes, sir.

1 Q Do you understand that sometimes people pay in cash
2 because -- who have insurance because the co-pay is
3 more than the cash price?

4 MR. ELSNER: Objection.

5 A I wasn't aware of that. My thinking was similar to
6 CVS' on page 51 that says "Cash payments for
7 prescription particularly if RxConnect indicates
8 the patient has insurance," that's one of the red
9 flags that CVS was concerned about. So I share the
10 same thoughts as CVS did in that regard.

11 BY MR. BUSH:

12 Q Right. But I asked -- you've already agreed with
13 me that this red flag flags people who don't have
14 insurance, right?

15 A That was what I said, yes, sir.

16 Q And I'm asking a different question, which is
17 where -- do you understand that there are
18 circumstances where a person who has insurance
19 might want to pay the co-pay in cash because -- I'm
20 sorry. Wrong. Withdrawn.

21 There are circumstances in which the -- a
22 patient with insurance might want to pay in cash
23 because the co-pay on the insurance is greater than
24 the cash payment?

25 MR. ELSNER: Objection.

1 A Yeah. I'm not aware of that, sir. I'm not that
2 involved in co-pays --

3 BY MR. BUSH:

4 Q Okay.

5 A -- to understand --

6 MR. ELSNER: Carmen, were you finished with
7 your answer?

8 THE WITNESS: Yes.

9 BY MR. BUSH:

10 Q All right. Do you know what cash discount card
11 programs are?

12 A I'm familiar with some of them, sir.

13 Q Do you know whether or not people who paid cash in
14 the cash discount program are included in this cash
15 red flag analysis?

16 A I don't know for certain, sir.

17 Q Would you agree with me that a person who has a
18 cash discount card is very likely not to have
19 insurance and so has the cash discount card in
20 order to get a discount on his cash payments for
21 prescriptions?

22 MR. ELSNER: Objection.

23 A No, sir.

24 BY MR. BUSH:

25 Q You would not agree with me on that? Why not?

1 A I don't have enough information to know that people
2 using a cash discount card and the purposes for
3 doing so. I am aware of individuals that use a
4 cash discount card even though they do have
5 insurance.

6 Q Okay. Do you have any idea what percentage of
7 people who have cash discount cards also have
8 insurance?

9 A No, sir.

10 Q Do you know who provides the cash discount card?

11 MR. ELSNER: Objection.

12 A Not specifically, sir.

13 BY MR. BUSH:

14 Q Do you know whether people paying with cash
15 discount cards require any adjudication of their
16 claim to be able to pay?

17 A My understanding is that there is no adjudication,
18 and that is the reason why people pay cash for the
19 prescription or pay cash for the co-pays to avoid
20 that third-party examination that would reject the
21 prescription, but that's as far as my understanding
22 goes.

23 Q I take it similar to the question I asked you
24 earlier, you've done no analysis to determine how
25 many people pay for nonopioid prescriptions with

1 cash?

2 A Correct.

3 MR. ELSNER: Objection.

4 A No analysis, sir.

5 BY MR. BUSH:

6 Q And you haven't -- so you haven't done -- made any
7 effort to compare whether the percentage of people
8 who pay for nonopioid prescriptions with cash is
9 similar to the percentage who pay for opioid
10 prescriptions with cash?

11 A The research that I did indicated that anywhere
12 between 87 and 90 percent of all people getting
13 prescriptions or all prescriptions are paid for
14 insurance. So the percentage of nonopioid
15 prescriptions that are paid for in cash seems to be
16 highly unlikely or significantly less than what may
17 be paid for opioid prescriptions.

18 Q What percentage of opioid prescriptions are paid
19 for in cash, as you understand it?

20 MR. ELSNER: Objection.

21 A I don't know, sir.

22 BY MR. BUSH:

23 Q So how do you know whether the percentage for
24 nonopioids as you just answered is a lot less than
25 for opioids?

1 A It's significant enough of a number to be
2 considered a red flag and to be cited by DEA and
3 others in a number of cases. So to me, that
4 indicates that probably the purchase of opioids by
5 cash is far more significant than the purchase of
6 nonopioids by cash.

7 Q But you haven't done any investigation to figure
8 out whether your hunch is right?

9 MR. ELSNER: Objection.

10 A My hunch is more experience and observations, but I
11 have not done any analysis.

12 BY MR. BUSH:

13 Q So on page 54, I think, on page 53 of your
14 supplemental report, Exhibit 2, at the bottom of
15 page you have the heading "Multiple Red Flags"?

16 A Yes, sir.

17 Q And you've spoken today a couple of times in the
18 answers to some of my questions about the
19 possibility that there would be other red flags in
20 addition to which red flag we were talking about.

21 My question here is, have you -- what kind of
22 an analysis, if any, have you done of what you're
23 calling multiple red flags here?

24 A On page 54, the analysis by Mr. McCann indicates
25 how many prescriptions actually had two or more of

1 the 16 red flags. And I think also contained in
2 this report, although I don't have it in front of
3 me, is a breakdown of how many of those
4 prescriptions had two or more, three, four, five,
5 and I think there was some prescriptions that
6 actually had ten or more red flags.

7 Q And have you looked at which red flags were
8 triggered in order to get more than one?

9 A No, sir.

10 Q So you haven't, for example, figured out whether
11 some of the prescriptions that triggered the
12 multiple red flags -- excuse me -- some of the red
13 flags that triggered the multiple red flag analysis
14 were redundant?

15 MR. ELSNER: Objection.

16 A I'm not sure what you mean by "redundant" because
17 the analysis, I understand it, was that each red
18 flag would be counted separately. So if it had
19 three or more red flags, those were three separate
20 red flags, not the same red flag counted twice.

21 BY MR. BUSH:

22 Q For example, if you look at Red Flag 5 and 6, it's
23 a prescription opioid or benzo and a muscle relaxer
24 with overlapping day's supply and a prescription
25 opioid muscle relaxer, same day, same prescriber,

1 right?

2 A Yes.

3 Q So those are -- both of those red flags are going
4 to be triggered for all of the prescriptions red
5 flagged by Red Flag 6, right?

6 A Yes, sir.

7 Q One's a subset of the other. Right?

8 A I believe so, sir.

9 MR. ELSNER: Objection.

10 BY MR. BUSH:

11 Q And similarly, Red Flag 11, 200 MME per day before
12 2018 and 90 after, and Red Flag 10, which is the
13 same but 50 MMEs, those overlap. Some of the
14 prescriptions that flagged for the -- all of the
15 prescriptions that flagged for the 50 MME are going
16 to also flag for the 90 MME, right?

17 MR. ELSNER: Objection.

18 A I can't comment. I'm not sure.

19 BY MR. BUSH:

20 Q But you didn't take that into account in deciding
21 whether or not multiple red flags -- or which --
22 you didn't take that into account in your multiple
23 red flag analysis?

24 MR. ELSNER: Objection.

25 A Red flag analysis was done by Mr. McCann. I simply

1 identified the red flags and asked him to run the
2 data on those red flags.

3 MR. BUSH: If we could take a break now. I
4 don't know how long I've been going actually
5 because I haven't been paying attention to the
6 time. But if you let me kind of collect my
7 thoughts here, I think I may be winding up.

8 MR. ELSNER: That would be fine.

9 THE VIDEOGRAPHER: We're off the record.

10 (A recess was taken.)

11 THE VIDEOGRAPHER: We're on the record.

12 MR. BUSH: Thank you.

13 BY MR. BUSH:

14 Q Mr. Catizone, do you intend to do any further
15 analysis of multiple red flags after this
16 deposition to testify about it at trial?

17 MR. ELSNER: Objection.

18 A Not that I'm planning, sir.

19 BY MR. BUSH:

20 Q And similarly to that question, we talked earlier
21 about the original red flag analysis that was done
22 and responded to in the plaintiffs' interrogatories
23 answers in 2020. And obviously I don't mean to
24 mischaracterize what you said, but my understanding
25 of what you said was that you really had not looked

1 at that original analysis and it wasn't a part
2 of -- or the basis for any of your opinions here
3 today.

4 First of all, did I characterize it generally
5 correctly?

6 A Yes, sir.

7 Q And I believe they are the same, but just to put a
8 bow on it, the red flag analysis in Mr. McCann's
9 first report, I think it's Red Flags 17 through 43,
10 are essentially the same as those interrogatory red
11 flags.

12 Did you rely on the analyses in McCann's
13 report for Red Flags 17 through 43?

14 A Just so that I can understand, the interrogatory
15 report that was mentioned referencing June of 2020,
16 that's a document I referred to that I did not pay
17 much analysis to. But McCann's report, if it
18 included those, I looked at that report and
19 utilized the report -- or data from that report in
20 my report.

21 Q Can you explain to us how you used the data and the
22 red flag analysis contained in McCann's report for
23 17 through 43. Yours are 1 through 16. So 17
24 through 43, how did you use those?

25 A I'm sorry. I used the data for 1 to 16 in my

1 report. But I did look at the data from 17 to 43.

2 Q And how did it inform your opinion on Red Flags 1
3 through 16?

4 A I looked at it, but I'm not sure how -- what effect
5 it had on my opinion.

6 Q Do you intend to do any further work on
7 Mr. McCann's red flag analyses 17 through 43 before
8 you testify in trial in this case?

9 MR. ELSNER: Objection.

10 A No, sir.

11 BY MR. BUSH:

12 Q Did you make any effort when you looked at Red
13 Flags 17 through 43 to analyze how those red flags
14 related to your Red Flags 1 through 16?

15 A No, sir, because what happened is, I approached the
16 red flags from my expertise and my background in
17 pharmacy and working with these types of
18 situations.

19 How Mr. McCann came up with his red flags and
20 the analysis he performed on those was not
21 something that I was aware of or knowledgeable of.
22 So I simply relied on my red flags and the data
23 analysis for that.

24 I looked at those data, but I did not make an
25 analysis of whether they were comparable or

1 conflicting or had any impact whatsoever on the
2 data that I was using.

3 Q So would it be accurate for me to say that you
4 don't sit here today and have an opinion what the
5 red flag analyses in 17 through 43 support your
6 analyses in 1 through 16?

7 MR. ELSNER: Objection.

8 A Yes, sir.

9 BY MR. BUSH:

10 Q I'm correct when I say that?

11 A Yes.

12 Q Okay. And you don't have any intent to go and try
13 and figure out the answer to that question between
14 now and the time you testify at trial?

15 MR. ELSNER: Objection.

16 A I'm just trying to still figure out what the
17 question is and yet alone get the answer, so the
18 answer is no.

19 BY MR. BUSH:

20 Q So I want to run through hopefully quickly your Red
21 Flags Analyses 1 through 16 and ask you one or
22 probably just one question about each one.

23 So Red Flag Number 1, which is 25 miles from
24 the patient to the pharmacy, the patient address is
25 in the patient profile in -- that's on the CVS and

1 other pharmacy defendants' system, right?

2 MR. ELSNER: Objection.

3 A Yes. From the sample data prescriptions that I
4 looked at, that was -- that appeared to be the
5 case, yes.

6 BY MR. BUSH:

7 Q And the prescriber address is on the prescription,
8 right?

9 A It's required on the prescription, sir, and --

10 Q So for -- sorry.

11 A Mr. McCann identified prescriptions in which there
12 was wrong addresses or made-up addresses for the
13 prescriber as well as for the patient.

14 Q Right. But for the vast majority of prescriptions,
15 leaving aside errors, the prescriber address is on
16 the prescription, right?

17 A Yes, sir.

18 Q All right. So a pharmacist who is trying to
19 evaluate how far the patient is from a pharmacy or
20 the patient is from a prescriber has the address
21 data from which he or she could figure that out?

22 MR. ELSNER: Objection.

23 A They may have the data, but if they are a
24 pharmacist that's not familiar with the area and
25 they are a floater in that system, the addresses

1 may be meaningless to that pharmacist.

2 BY MR. BUSH:

3 Q But they could figure it if they thought it was --
4 if it looked odd and really needed to be
5 investigated, they could figure it out, right?

6 A I suppose so, sir, yes.

7 Q And with respect to prescriptions with overlapping
8 days -- and so this is doctor shopping and pharmacy
9 shopping -- prescriptions with overlapping days in
10 two or more prescribers or two or more pharmacies,
11 that information is also in the patient profile and
12 on the prescription that's presented to the
13 pharmacist, right?

14 A No, sir.

15 Q Why not?

16 A If those prescriptions were prescribed by
17 prescribers outside of that pharmacy chain or they
18 were filled at pharmacies outside of that pharmacy
19 chain, that information would not be available to
20 the pharmacist unless they queried the PDMP.

21 Q And all of the prescriptions that you have flagged
22 in Red Flags 3 and 4 are based on the data from
23 each individual defendant's dispensing data. So
24 that information would be available to the
25 pharmacist at CVS, Walgreens, Walmart, and Rite Aid

1 when they were looking at the prescriptions that
2 your red flags have flagged?

3 MR. ELSNER: Objection.

4 A Correct, for that data set. When you asked the
5 question the first time, I thought you were
6 referring to generally.

7 BY MR. BUSH:

8 Q And with respect to the combination red flags,
9 the -- this is, again, all based on the dispensing
10 data that comes from each individual defendant so
11 that the pharmacist for each individual defendant
12 will know whether or not a prescription -- sorry --
13 a prescription opioid, a benzo, and a muscle
14 relaxer has been prescribed to that patient?

15 MR. ELSNER: Objection.

16 BY MR. BUSH:

17 Q Right?

18 A Yes, sir.

19 Q And they'll also know whether a prescription opioid
20 or a benzodiazepine has been prescribed to that
21 patient because it's in their data? It's in the
22 patient profile, right?

23 A Yes, sir.

24 Q And they'll also know when you -- for your
25 prescription -- sorry -- for your red flag for two

1 short-acting prescription opioids on the same day,
2 that's going to be on the prescriptions that are
3 presented to the pharmacist to fill. So she's
4 going to know that too?

5 A Yes, sir.

6 Q And she's also going to know that the patient is --
7 has been getting whatever MMEs per day for, you
8 know, up through -- or through 2018 and 50 MMEs per
9 day after or 90 MMEs per day after, so for Red
10 Flags 10 and 11, that information is on the
11 prescription, and it's in the patient profile,
12 right?

13 MR. ELSNER: Objection.

14 A It should be, and so the answer is yes, if it was
15 in there.

16 BY MR. BUSH:

17 Q And if somebody presents a prescription that's an
18 early refill, which we didn't talk about that
19 specifically, but that information is also going to
20 be in the patient profile and on the prescription
21 that's being presented to the pharmacist. So she's
22 going to have all that information when she's
23 deciding whether or not to fill that prescription,
24 right?

25 MR. ELSNER: Objection.

1 A Yes, sir.

2 BY MR. BUSH:

3 Q And she's also going to have the information on the
4 prescription and in the patient profile about
5 whether there's more than a 200-day supply in a
6 six-month period because that's all in her system
7 and on the prescription, right?

8 A Yes, sir.

9 Q And she's also for sure going to know that the
10 patient wanted to pay in cash?

11 A Yes, sir.

12 Q On page 60, if I can ask you to take a quick look
13 at that --

14 MR. ELSNER: Page 60 of his report?

15 MR. BUSH: Yeah, of your report. Well, wait a
16 second. Too many different versions of this
17 report. Sorry, bear with me, almost done here.

18 BY MR. BUSH:

19 Q Okay. On -- yeah, it's on page -- yeah, it's on
20 page 60 of your supplemental report. So that's
21 Exhibit 2.

22 And above the heading H, you have -- I'd like
23 you to look at that paragraph that's just above H
24 and --

25 A Mr. Bush, there's no H on the page.

1 Q Exhibit 2? It's the supplemental report?

2 A Is it a G?

3 Q Sorry?

4 MR. ELSNER: G.

5 A Do you mean G instead of H?

6 BY MR. BUSH:

7 Q On my copy, it's H. Are you on page -- do you have
8 the supplemental report? Make sure we're on the
9 same exhibit.

10 A Yes, sir. On page 60, it says G.

11 Q What does -- what does it say? What's the heading?

12 A "Investigate, Resolve, and Document Resolution of
13 Red Flags."

14 Q Huh. That's very interesting. I have a
15 supplemental report where that is what the heading
16 is, but it's H. Might want to try and figure out
17 why that's true, but for the moment, let me ask you
18 the question. Okay.

19 The paragraph above it -- and tell me if --
20 for some reason, this has gotten a little screwed
21 up in terms of the headings and everything, but on
22 my copy of your report, it says, "As a result of
23 these DEA enforcement actions -- "

24 Is that what it says about this heading on
25 your version of it?

1 A Yes, sir.

2 Q Okay.

3 "As a result of these DEA enforcement actions
4 related to defendants and other pharmacies for
5 failures to maintain effective controls to guard
6 against diversion and pharmacy practice as well as
7 warning from the DEA given to the defendants, one
8 would expect the number of drugs dispensed in the
9 face of red flags to have significantly declined
10 meaningfully over time."

11 You then go on to say, "However, a review of
12 annualized instances of red flags request
13 calculated by Dr. McCann did not reveal significant
14 reduction in the amount of prescriptions filled in
15 the face of red flags over time."

16 What did you review to reach that conclusion
17 in the final sentence that I just read?

18 A When I looked at the prescriptions that were
19 dispensed at the beginning of the process and the
20 red flags, so the early days, early years, and then
21 at the end, the number of prescriptions with red
22 flags didn't diminish significantly.

23 Q All right. And did you look at any particular
24 exhibit or appendices or table that Dr. McCann or
25 Mr. McCann created to reach that conclusion?

1 A It was in his report, and I don't have a copy of it
2 to give you a specific example, but it was in his
3 report as I looked at all the numbers.

4 Q One second.

5 MR. BUSH: Jason, can you put up -- it's in
6 our exhibit folder. It's CVS 7. The first page of
7 it is Appendix 14. Yeah.

8 And, Mr. Catizone, yeah, you can open the --
9 go ahead and open the packet for that.

10 MR. ELSNER: I'm sorry. I missed it. What
11 was the number, Graeme?

12 MR. BUSH: CVS 7.

13 BY MR. BUSH:

14 Q Let me know when you have that. And I'm not quite
15 sure whether Jason is going to be able to pull this
16 up or not.

17 Do you have it in front of you?

18 A Yes, sir.

19 Q So this is -- let's mark this as whatever the next
20 exhibit is.

21 THE REPORTER: It will be 15.

22 (Exhibit 15 was marked for identification.)

23 BY MR. BUSH:

24 Q Just for the record, what I have done is excerpted
25 from Appendix 14 of Mr. McCann's supplemental

1 report the three pages that are behind the cover
2 page that says Appendix 14. And I think I'm just
3 going to focus your attention on the first page.

4 But that appears to be all defendants'
5 combination red flag prescription summary, Lake
6 County and Trumbull County, red flag computation 1
7 through 16 in number of prescriptions.

8 Did I read that accurately?

9 A Yes, sir.

10 Q Okay. And I mean, we can do this one by one, but
11 let's see if we can just do this in summary
12 fashion. It looks to me, Mr. Catizone, that the
13 high point for the number of prescriptions that's
14 flagged on most of these red flag prescriptions 1
15 through 16 was 2011. And for Red Flag 4, it was
16 2012. And there's an anomaly -- I don't completely
17 understand -- for Red Flag 12 where it actually
18 piqued later. If you'd look down, 2011, through
19 all of these red flags and then look thereafter and
20 tell me if you agree that with the exceptions I
21 noted, Red Flag 4 and Red Flag 12, the high point
22 for prescriptions that flagged was in 2011.

23 MR. ELSNER: Objection. I think you're -- I
24 object to using this chart to reach the conclusions
25 you're trying to reach and associate with his

1 report. But you can continue.

2 A Mr. Bush, if I can answer that in the context of
3 which you began the question.

4 So in my report, I noted that in 2010, there
5 was a meeting with the DEA, and after that meeting,
6 I would expect the prescriptions to decrease. If
7 you look at the data in the column mentioned 2010
8 for all the defendants under the red flags and then
9 look at the columns for 2011 and 2012, you'll see
10 that in some cases after that meeting with the DEA,
11 those red flag numbers actually increased and
12 stayed high all the way through to about, oh, 2016,
13 2017, or so.

14 So based upon when the DEA interacted with the
15 defendants is when I would have expected a
16 precipitous drop from prescriptions in those
17 subsequent years, 2011, 2012, in case -- the
18 opposite, just as you said, 2011 was the high point
19 even after a meeting with the DEA.

20 BY MR. BUSH:

21 Q Let's look at this --

22 A That's what I get by my analysis from my --

23 Q You didn't actually say anything in that paragraph
24 I read you about 2010. You said "As a result of
25 DEA enforcement actions related to the defendants

1 and other pharmacies" and then you go on. And you
2 say you would have expected the number of drugs
3 dispensed in the face of red flags to have
4 significantly declined meaningfully over time.

5 So over time would include, you would agree
6 with me, would you not, all the way through to
7 2018, 2019?

8 A Correct. But --

9 MR. ELSNER: Objection.

10 A -- the paragraph did mention 2010. I said "After
11 the DEA executed administrative inspection warrants
12 at CVS stores, interviews with CVS pharmacies, the
13 pharmacists in charge of one store asked about the
14 staggering amounts of oxycodone dispensed in CVS's
15 20 -- December 27 meeting with the DEA and the
16 pharmacist was unfamiliar with multiple red flags."

17 So my reference in that last paragraph was
18 back to all the activities that occurred between
19 CVS and the DEA in 2010.

20 BY MR. BUSH:

21 Q You would agree with me that over the time period
22 of 2011 to 2019, the number of prescriptions that
23 flagged on your red flags -- not accepting them as
24 valid red flags, but the number of prescriptions
25 that flagged on your red flags decreased

1 meaningfully in some cases by more than 50 percent?

2 MR. ELSNER: Objection. Mischaracterizes the
3 document and the chart.

4 A I would say that the prescription volumes decreased
5 and did not decrease significantly until 2019.

6 BY MR. BUSH:

7 Q So you would say going from -- I'm sorry -- from
8 4,000 for flag 1 to roughly 2,000 in 2016 was not
9 meaningful?

10 MR. ELSNER: Objection.

11 A Not over a five-year period after the DEA had
12 warned and taken action against CVS, to take
13 five years to get to one-half the number is not a
14 meaningful decrease in my opinion.

15 BY MR. BUSH:

16 Q And for flag 5 to get to less than half by 2016,
17 almost half by 2015, not a meaningful decrease in
18 your book?

19 MR. ELSNER: Same objection. Misstates --

20 A Not over the time period and based upon the
21 interactions with the DEA.

22 MR. BUSH: Okay. I'm going to -- let me just
23 take a quick look and see if I've forgotten
24 anything.

25 Brian, you're up.

1 Mr. Catizone, thank you very much for your
2 time.

3 THE WITNESS: Thank you, Mr. Bush.

4 CROSS-EXAMINATION

5 QUESTIONS BY MR. BRIAN SWANSON:

6 Q Mr. Catizone, how are you?

7 A I'm fine, sir, and yourself?

8 Q Good, thank you. I'm not sure I introduced myself
9 before. I'm Brian Swanson, and I represent
10 Walgreens in this matter.

11 I want to cover with you today and into
12 tomorrow two things. The first is I want to talk
13 about your opinions regarding what you call the
14 standard of care and corporate responsibility. I
15 know you've touched on that in response to some of
16 Mr. Bush's questions, but I want to take a bit
17 deeper dive there. Okay?

18 A Yes, sir.

19 Q And then I also will have some questions specific
20 to my client Walgreens that I'll try to touch on at
21 the end of my questioning.

22 Does that sound fair?

23 A Yes, sir.

24 Q Okay. So to set up those topics, I wanted to
25 return briefly to the NABP and your time there. I

1 think we've established maybe a couple times that
2 from 1988 through May of 2020, you were the
3 executive director and the CEO of NABP, true?

4 A Yes, sir.

5 Q When you were the executive director and the CEO,
6 were you also a member of the NABP's executive
7 committee?

8 A An ex officio member. I was the secretary of the
9 executive committee, sir.

10 Q And what did that mean as an ex officio member?
11 Did you vote with the committee? What were your
12 responsibilities?

13 A I was responsible for the minutes of the meeting,
14 and I did not have -- I did not vote in any
15 proceedings.

16 Q Did you participate in meetings, though, in
17 advising the executive committee and giving input
18 where it was appropriate?

19 MR. ELSNER: Objection, vague.

20 A Yes, sir.

21 BY MR. SWANSON:

22 Q Okay. So talking more generally about the NABP and
23 its role. I just wanted -- I pulled out Exhibit 4,
24 which is your CV in this matter. If you can find
25 it, great. I'm not planning to quiz you on it.

1 But in your CV, Exhibit 4, you talk about what you
2 refer to as the purpose of NABP. It's right there
3 on the first page, second paragraph.

4 Do you see that?

5 A Yes, sir.

6 Q And you set out three different areas, according to
7 you, defining the purpose or the role of the NABP,
8 right?

9 A Yes, sir.

10 Q The first one you have there is to "assist the
11 state boards of pharmacy in protecting the public
12 health and welfare," right?

13 A Yes, sir.

14 Q And at the NABP, is it true that all 50 state
15 boards of pharmacies were members or participants?

16 A All of the 50 states, the District of Columbia, and
17 all of the U.S. territories as well as provinces in
18 Canada, Australia at one time was a member,
19 New Zealand, Virgin Islands and Bahamas were
20 members of the NABP.

21 Q So all those entities were members of NABP when you
22 were there, true?

23 A Yes, sir.

24 Q The second purpose you say is "to serve as an
25 information and disciplinary clearinghouse for the

1 interstate transfer of licensing among the state
2 boards of pharmacy."

3 Did I read that right?

4 A Yes, sir.

5 Q And can you tell me what that means, what the
6 purpose is there?

7 A NABP was founded on this concept. It's the
8 agreement among the states that they would work
9 together and share information through NABP so that
10 pharmacists seeking licensure in other states, the
11 states would be provided by information that was
12 centralized and reviewed by NABP.

13 Q Okay. So if I'm a pharmacist in Illinois and I
14 want to move my practice to Arizona, the NABP makes
15 that transition easier for me?

16 A We'd provide background information on you to the
17 state for the state to make the ultimate decision.

18 Q Got it. And then the third purpose you have there
19 is to "provide model regulations in order to assist
20 the state boards of pharmacy with the development
21 of uniform practice, educational, and competency
22 standards for the practice of pharmacy," right?

23 A Yes, sir.

24 Q And I want to spend a little bit more time on, I
25 think, that aspect of NABP. Is it fair to say that

1 the NABP has the ability to influence state law and
2 policy around the practice of pharmacy?

3 MR. ELSNER: Objection.

4 A If you're referring -- what NABP does is provide
5 educational information about the laws. And then
6 leaves the decision up to the local authorities or
7 the local legislature.

8 BY MR. SWANSON:

9 Q Right. But when you do that, when you provide that
10 information, you provide information that you think
11 is important to state boards regarding laws and
12 policies that the NABP would recommend the states
13 follow.

14 Would you agree with that?

15 MR. ELSNER: Objection.

16 A Regarding protection of the public health, yes,
17 sir.

18 BY MR. SWANSON:

19 Q Yes, sir.

20 And so if there's an important law or policy
21 that the NABP, you and your team had sort of
22 thought about and you thought it was important, you
23 could go out and try to persuade the states to
24 adopt the NABP's policies, right?

25 MR. ELSNER: Objection.

1 A Just so that I'm clear, because I know there's
2 distinction in law, NABP would not get involved in
3 any persuading or lobbying because of our
4 501(c)(3). What we would do, though, is provide
5 information about that law or our opinion as to
6 whether or not we thought the law was helpful to
7 the state boards and protection of public health.
8 But we would not try to influence or sway the
9 states one way or the other, sir.

10 BY MR. SWANSON:

11 Q But you might provide opinions about laws or
12 regulations that the state could adopt, for
13 instance, to address the prescription opioid abuse,
14 right?

15 A Yes, sir.

16 Q And as I understand it, one of the ways that NABP
17 would do that is by drafting and then distributing
18 model regulations to the various state boards,
19 true?

20 A Somewhat, sir. What we have is a model practice
21 act and regulations, which is a guide to the
22 states. And anytime a new issue arose that was
23 incorporated into that document, that was NABP's
24 suggestion as to what might be a model law and
25 regulation.

1 Q Got it. And so you and your team at the NABP, I
2 guess, at one point sat down and put together model
3 regulations, and then as time passes and you think
4 they need updating, you would provide those updates
5 to the state; is that accurate?

6 A Yes, sir.

7 Q And would these model regulations get updated
8 annually or just when a new issue popped up that
9 you thought was important to address to the states?

10 MR. ELSNER: Objection.

11 A That would depend on several factors. One, if a
12 state presented that issue to NABP and asked for it
13 to be revised, if NABP identified a situation where
14 it needed to be revised, or whether at the local
15 district meetings or the annual meeting the states
16 collectively asked NABP to look at this issue or
17 revise the issue.

18 BY MR. SWANSON:

19 Q But were there other -- were there ever times when
20 the NABP on its own through, you know, looking at
21 what was happening in the practice of pharmacy
22 throughout the country, said, you know, I think we
23 should update these model regulations and
24 distribute them to the states because I think the
25 states should be modifying their laws to better

1 address a certain issue?

2 Does that make sense?

3 A Yeah. But in order for us to do that, it would
4 have to go through a committee process, and then
5 the ultimate committee would be the law enforcement
6 and legislation committee, which is comprised of
7 volunteer members from each of the states.

8 That committee would have the final say as to
9 whether or not that recommendation would be made to
10 the model act.

11 Q All right. When was the last time that the model
12 regulations were updated?

13 MR. ELSNER: Objection.

14 A Last year.

15 BY MR. SWANSON:

16 Q And do the model regulations that we've been
17 discussing, do those reflect the views of the NABP
18 as far as the laws and policies that the NABP
19 believes the state should adopt?

20 A Adopt based upon what may already be in place,
21 either in federal law or what the states may
22 already have in place, sir.

23 Q Okay. But it's the NABP's view that its -- that
24 its model regulations are sort of best practices in
25 the law and should be adopted or incorporated by

1 the states, right?

2 A Twofold purpose. One, best practices, two, not all
3 states are at the same place in terms of resources
4 or regulation. So states that may be new to a
5 particular area of practice or regulation and may
6 need that assistance or that information or those
7 basics is another purpose as to why they are
8 included in the model act.

9 Q Another thing that I've seen from the NABP
10 documents, we talked a bit about the model state
11 pharmacy act and the model rules.

12 I've also seen newsletters that the NABP
13 distributes periodically; is that accurate?

14 A There's a couple of different newsletters. So --

15 Q Yes, sir.

16 A Which one are you referring to, sir, just so I can
17 answer that correctly?

18 Q Well, I was going to try to ask about them both
19 because I want to understand the difference.

20 I've seen State Board of Pharmacies
21 newsletters that are distributed periodically. Are
22 you are familiar with those?

23 A Yes, sir.

24 Q And I notice at least in Ohio, you are the national
25 news editor and the executive editor of the Ohio

1 State Board of Pharmacy news, is that right, when
2 you were at NABP?

3 A No, sir. I'm the editor for the NABP portion of
4 that newsletter, which this inner two pages.

5 The outer two pages are prepared by the
6 individual boards, 35 states which participate in
7 the program, and usually the executive director of
8 that board, Steve Schlerholt in Ohio, would be the
9 editor of the Ohio information, the outer two
10 pages.

11 Q Okay. So for the Ohio board of pharmacy news,
12 State Board of Pharmacy newsletters, you were
13 responsible for the -- you said the inner two
14 pages?

15 A Yes, sir.

16 Q And you were the executive editor for those pages?

17 A Yes, sir.

18 Q And then for the outer pages, that was the head
19 honcho at the state agency was responsible for
20 those?

21 A Or whoever the designee was, maybe the chief
22 elected officer or maybe chief compliance officer,
23 depending on the states, sir.

24 Q And how would you decide what you were going to put
25 into the new -- the NABP was going to put into that

1 newsletter versus the states?

2 MR. ELSNER: Objection.

3 A Our information was what might be a timely issue to
4 advise a state if a product was pulled off a
5 market. If the FDA or DEA changed the requirement
6 or regulation, that's the type of information we
7 put in the middle pages, something that would be of
8 interest and applicable across all states.

9 BY MR. SWANSON:

10 Q Was your departure from the NABP voluntary?

11 A Yes, sir.

12 Q Why did you decide to leave?

13 A After 35 years of 24 hours/7, I needed to spend
14 more time for me and my family, and I thought that
15 I was leaving NABP at a high moment and wanted to
16 leave at that point and make sure the association
17 was in good financial and structural position.

18 Q Were you involved at all in the search for your
19 replacement at NABP?

20 A Only in organizing the process, but I was not
21 involved in any of the decision-making interviews
22 or selection.

23 Q So you didn't -- did you provide input to the board
24 of directors or the executive board as to what sort
25 of person they should look for in finding your

1 replacement?

2 A No, sir.

3 Q Did you have any discussions with the board, not
4 you're providing input, but did they tell you what
5 they were looking for in your replacement?

6 A No, sir.

7 Q And the NABP, as I understand it, hired a
8 Dr. Lemrey Carter to replace you; is that right?

9 A Yes, sir.

10 Q And did you know Dr. Carter before he was
11 appointed?

12 A I knew him from my interactions while he was at
13 Walgreens and later at CVS and then back at
14 Walgreens, yes, sir.

15 Q And did he interact with the NABP in his -- when he
16 was with Walgreens and CVS?

17 A At times he did, sir, yes.

18 Q And through that interaction, do you have -- did
19 you get to know him at all?

20 A I knew him professionally but not so much
21 personally, sir.

22 Q Okay. Well, professionally, did he have expertise
23 in pharmacy practice, in your view?

24 MR. ELSNER: Objection.

25 A It was not an area that I interacted with him to be

1 able to make that decision.

2 BY MR. SWANSON:

3 Q Okay. So you don't know anything about his
4 expertise in, say, pharmacy operations either?

5 A No, sir. All that I knew is that he worked at
6 Walgreens and had some sort of responsibility for
7 all the Walgreens across the country.

8 Q Okay. And that's all you know about him?

9 A That was the extent of it, yes, sir. I didn't know
10 what he did specifically or what his
11 responsibilities were.

12 Q Understood.

13 And you haven't spoken to Dr. Carter at all
14 about this lawsuit; is that right?

15 A Except to advise him that I'm involved with it but
16 none of the particulars or facts.

17 Q Okay. And you're certainly not relying on anything
18 you learned from Dr. Carter in formulating your
19 opinions in this case, true?

20 A No, sir, Dr. Carter and I meet for about three
21 minutes a week, and that's the extent of our
22 interactions.

23 Q Got it.

24 Before I move off your CV, I just had a couple
25 of questions. You said in your CV at page 2, you

1 mentioned that you're a registered pharmacist, and
2 then you say that you practiced in community
3 hospital and institutional settings as a registered
4 pharmacist throughout your career.

5 Do you see that?

6 A Yes, sir.

7 Q Is that accurate?

8 A Yes, sir.

9 Q You talked a bit in response to earlier questioning
10 about your time in -- in a community pharmacy.

11 When did you last work in a hospital setting?

12 A Probably back in 1990.

13 Q And what about in an institutional setting?

14 A The hospital pharmacy also had an institutional
15 setting as well.

16 Q Understood.

17 When did you last dispense an opioid
18 prescription?

19 A Probably back in 2004, sir.

20 Q And have you ever dispensed an opioid prescription
21 that hit on any of the red flags that you now
22 identify in this lawsuit?

23 A Not that I'm aware of, sir.

24 Q Do you know one way or the other?

25 A I would say based upon the diligence that I did in

1 filling prescriptions, the answer would be no, but
2 I couldn't say for certain.

3 Q Did you ever refuse to fill an opioid prescription?

4 A Yes, sir.

5 Q You're certain?

6 A Very certain.

7 Q And if we were to look at your dispensing
8 practices, we would see that if you dispensed an
9 opioid prescription, you would have documented any
10 diligence you conducted on that?

11 A Yes, sir.

12 Q Okay. You understand, sir, that your role in this
13 litigation is as an independent expert and not as
14 an advocate for the plaintiffs, right?

15 A Yes, sir.

16 Q Okay. So you're supposed to be independent and
17 apply your expertise, whatever that is, to the
18 facts of the case as presented to you, right?

19 A Yes, sir.

20 Q And you agree that we, the pharmacies, are entitled
21 to Carmen Catizone's opinions and not the opinions
22 of the plaintiffs' lawyers or other lawyers, right?

23 A Yes, sir.

24 Q It would be inappropriate for you to simply adopt
25 the plaintiffs' allegations or arguments and claim

1 them as your own, right?

2 A Yes, sir.

3 Q Why would that -- why would that be inappropriate?

4 A If I did not feel that way and put that in the
5 opinion, then I would not be objective, and it
6 would not represent what I thought was right and
7 what my opinion should say.

8 Q What we have in your report, Exhibit 2, are your
9 words and your opinions and not those of the
10 plaintiffs' lawyers, right?

11 MR. ELSNER: Objection.

12 A There may be excerpts in there in which I took
13 information from documents, but everything that --
14 the final say was my writing and approved by me.

15 BY MR. SWANSON:

16 Q Yeah. But you already told us that if you quoted
17 something or pulled something from a document, you
18 told us that, right, in your report?

19 MR. ELSNER: Objection.

20 A I put -- yes, sir, I believe so.

21 BY MR. SWANSON:

22 Q Okay. Now, your report has -- looks like nearly
23 450 footnotes, right?

24 A Yes, sir, I believe so.

25 Q And the purpose of those footnotes is to provide

1 evidentiary support for the statements that you've
2 made, right?

3 MR. ELSNER: Objection.

4 A Yes, sir.

5 BY MR. SWANSON:

6 Q And you're telling us that you've reviewed each and
7 every footnote that you put into your report to
8 make sure that it does support the statements that
9 you say they support, right?

10 A Yes, sir.

11 Q Okay. You agree with me, don't you, sir, that the
12 pharmacists who work for the retail chain
13 pharmacies in this case, they don't prescribe
14 opioid medications, right?

15 A Right, they do not prescribe.

16 Q Correct. We agree with that, right?

17 A Yes, sir.

18 Q Okay. And the prescriptions at issue in this
19 lawsuit that you identify in your red flag
20 analysis, those were all written by doctors or
21 other practitioners who are registered with the DEA
22 to write prescriptions for controlled substances
23 including opioids, right?

24 A They should be. I believe some of them were not.

25 Q Well, you're not offering any opinions that the

1 pharmacies in this lawsuit dispensed doctors
2 without DEA registration. You haven't given that
3 opinion, have you?

4 MR. ELSNER: Objection.

5 A No, sir.

6 BY MR. SWANSON:

7 Q And those doctors who wrote those prescriptions
8 that you identified in your red flag analysis, they
9 were also licensed by the State of Ohio Board of
10 Medicine to write prescriptions for controlled
11 substances, right?

12 MR. ELSNER: Objection.

13 A That would be an assumption that I made. I did not
14 verify that information, but I would make that
15 assumption.

16 BY MR. SWANSON:

17 Q Well, and you also haven't said that the pharmacy
18 defendants were wrong because they were filling
19 scripts for doctors who didn't have licenses,
20 right? You haven't provided that opinion, right?

21 MR. ELSNER: Objection.

22 A Correct.

23 BY MR. SWANSON:

24 Q Now, Mr. Bush asked you some questions about
25 whether you had seen some info from the DEA

1 regarding, you know, the number of doctors out
2 there who trying to do right by their patients. I
3 want to ask you directly, do you agree with me,
4 sir, that the vast majority of doctors in Ohio are
5 trying to do right by their patients and writing
6 prescriptions based only on legitimate medical
7 need?

8 A I don't know how to quantify that. I would say
9 there are a fair number of doctors that do exactly
10 as you say. But because of the significance of the
11 opioid epidemic, I would also have to say there is
12 a significant number of doctors who weren't writing
13 prescriptions for legitimate medical needs.

14 Q And have you done any analysis of that? Can you
15 tell me what percent of the doctors out there in
16 Ohio you're going to come in and say were not
17 writing prescriptions based on legitimate medical
18 need?

19 MR. ELSNER: Objection.

20 A I can only base that on, Mr. Swanson, the number of
21 people that have died from overdoses, almost a
22 million people and the number of people that have
23 died in Ohio from that. That's the basis for me
24 saying there had to be some causal relationship and
25 how did those opioids get out of the system for

1 these individuals to take those and actually
2 overdose and die.

3 BY MR. SWANSON:

4 Q You've mentioned a couple times these overdose
5 figures that you rely on. Are those overdose
6 figures specific to prescription opioid drugs?

7 A The numbers are -- yes, they reflect the opioid
8 overdose.

9 Q Right. But there are -- opioid overdoses can
10 include heroin, illicit fentanyl and other illegal
11 drugs.

12 You understand that, right?

13 A Yes, sir.

14 Q And so when I ask you the question, the numbers you
15 keep repeating, or that you provided to me and to
16 earlier questioning, are those prescription opioid
17 overdose deaths or are they all opioid overdose
18 deaths?

19 A The numbers I prepared presented before were
20 prescription opioid and did not include heroin and
21 other illicit drugs.

22 Q Got it. I just wanted to be clear on that.

23 You're familiar with what's called a pill
24 mill?

25 A Yes, sir.

1 Q What is that?

2 A A pill mill is an operation run by a prescriber in
3 which the prescriber is simply writing
4 prescriptions for controlled substance and other
5 medications without a legitimate medical purpose
6 and for the purpose of profit, greed, or other
7 purposes.

8 Q And can some of those -- and that's -- obviously,
9 that's unlawful activity, right?

10 A I would hope so.

11 Q And do some of those prescribers also have
12 operations where they dispense medications from
13 their shops?

14 A I'm sorry. I didn't understand the question.
15 Dispense medication -- that's what they're doing.
16 They're dispensing -- some of them are dispensing
17 as well if that's the question, sir.

18 Q Yeah, that was my question.

19 So you define it as -- a pill mill as an
20 operation where a doctor writes unlawful
21 prescriptions, but some of those doctors also fill
22 those prescriptions from their shops, right?

23 A Yes, sir.

24 Q And, of course, that's also illegal, right?

25 MR. ELSNER: Objection.

1 A If they are not for legitimate medical need, yes,
2 but dispensing them is not illegal, sir.

3 BY MR. SWANSON:

4 Q I'm sorry. Dispensing them is not illegal?

5 A Right. A doctor in all states can dispense
6 medications from their practice.

7 Q I see. But if they are dispensing medications that
8 were not written for a legitimate medical purpose,
9 then that's unlawful?

10 A Yes.

11 Q And did pill mills in Ohio contribute to the opioid
12 crisis in Lake and Trumbull Counties?

13 A That was not data I looked at, but I would say that
14 because the opioid epidemic is a complex issue, I'm
15 sure there were instances where that happened, yes.

16 Q Okay. But you don't know one way or the other to
17 what extent pill mills contributed to the opioid
18 crisis in Ohio?

19 A I knew there were pill mills, but I don't know the
20 extent of that impact.

21 Q I think I know the answer to these, but I want to
22 make sure I'm clear what your testimony is.

23 Are opioid medications important medications
24 for the treatment of certain conditions?

25 A They are medications that are prescribed for

1 certain conditions, yes.

2 Q Right. And they provide -- they're important
3 medicines for a lot of people suffering from pain,
4 right?

5 A They are not really supposed to be prescribed for
6 all pain, just certain types of pain. So for those
7 types of pain and patients, yes.

8 Q Well, let me ask you: You're certainly not a
9 person who believes that opioid medication should
10 be taken from the market, right?

11 A No, sir, I don't believe that.

12 Q And you agree that a cancer patient, for instance,
13 should have access to opioid medications if needed
14 to treat pain, right?

15 A Again, it would depend on the patient and to make
16 sure that those opioids didn't do more harm to that
17 patient.

18 Q But you're not -- you don't have expertise or
19 background in what a doctor should or shouldn't
20 prescribe to his or her patient?

21 MR. ELSNER: Objection.

22 BY MR. SWANSON:

23 Q Right?

24 A Well, my training as a pharmacist, and education,
25 has helped me look at prescriptions doses,

1 diseases, and to know that whether or not that
2 would be an appropriate medication, I'm not
3 involved in the clinical diagnosis or physical
4 assessment. But I have enough information and
5 knowledge as a pharmacist to be somewhat
6 knowledgeable in that area, sir.

7 Q Well, you know, I'm a lawyer and I'm somewhat
8 knowledgeable about it. I'm trying to figure out
9 where your expertise is. You obviously didn't go
10 to medical school, right?

11 A No, sir.

12 Q Okay. And you don't have any training in specific
13 disease states for, say, cancer or other illnesses,
14 right?

15 MR. ELSNER: Objection.

16 A I did have training in -- for disease states, but
17 not cancers.

18 BY MR. SWANSON:

19 Q Okay. Do you have any specialized training in
20 treatment of pain?

21 A No, sir.

22 Q Do you have specialized training in arthritis or
23 arthritic conditions?

24 A No, sir.

25 Q And do you have any specialized training in

1 illnesses like sickle cell anemia or other
2 conditions where opioid medications may be
3 appropriate treatments?

4 A No, sir.

5 Q And I thought I heard it's your opinion that opioid
6 medications in your view are not appropriate
7 treatment for chronic pain, such as pain caused by
8 arthritis?

9 Is that your opinion?

10 A Well, I think so. The characterization that all
11 arthritis is chronic pain, studies have shown that
12 using a nonsteroidal anti-inflammatory with
13 acetaminophen is more effective for chronic pain,
14 and that the primary benefit of an opioid when
15 treating chronic pain is the mood elevation that
16 first occurs which gives the patient a feeling of
17 euphoria which believes them -- or helps them think
18 that their pain is being alleviated. But new
19 studies have said that there really isn't --
20 opioids are not really the primary source for
21 chronic pain.

22 Q In all of those opinions or articles that you just
23 read, you haven't disclosed any opinions in your
24 report in this case about whether opioids are
25 appropriate treatments for those conditions, right?

1 A It wasn't something I was asked to opine on until
2 you just asked the question, sir.

3 Q Got it. I just want to be clear. You're not going
4 to come into court and start proffering expert
5 testimony on whether opioid medications are
6 appropriate for a given condition.

7 You're not going to do that, right?

8 MR. ELSNER: Objection. Depends on whether
9 you ask the question.

10 A If you ask the question, yes.

11 BY MR. SWANSON:

12 Q How about if I don't ask the question? You don't
13 have an opinion, right?

14 MR. ELSNER: Objection.

15 A If I don't ask the question and there's not an
16 opportunity to provide my knowledge, then the
17 answer would be no, sir.

18 BY MR. SWANSON:

19 Q Got it.

20 Is a pharmacist licensed by the State of Ohio
21 expected to exercise independent professional
22 judgment before dispensing a medication?

23 A Can you help me understand what you mean
24 by "independent professional judgment"?

25 Q That's a term I've seen a bunch. I've maybe seen

1 it in your report.

2 You don't know what independent professional
3 judgment is?

4 A I know what it is in my report, and I'll explain it
5 to you.

6 Q That's what I asked.

7 A The pharmacist is supposed to make an objective
8 decision and not be influenced by any other
9 factors, such as corporate metrics or corporate
10 requirements. They are supposed to do their due
11 diligence as a pharmacist and make sure the patient
12 is treated safely.

13 Q Okay. All right. If you can look at Exhibit 2, I
14 want to turn now to your opinions regarding the
15 standard of care. Okay?

16 A That's the folder that's marked WAG2?

17 Q No, sir. I'm sorry. It's Exhibit 2. I'm not
18 going to introduce an exhibit yet. It might be a
19 bit. I'm just looking at Exhibit 2 that's already
20 been marked, the supplemental report.

21 A Okay. The supplemental report?

22 Q Yes, sir.

23 A I've got that, yes, sir.

24 Q All right. And if you turn to page 7, you see
25 there's a section titled "The Practice of Pharmacy

1 Standard of Care"?

2 A Yes, sir.

3 Q And earlier Mr. Bush asked you some questions about
4 whether the standard of care was different from the
5 statutory requirements of a pharmacist's practice.

6 I want to ask you a bit more about that issue
7 now. Okay?

8 A Yes, sir.

9 Q Okay. So when you used that term, "standard of
10 care," just to sort of help me out, to start things
11 out, how do you define that term, "standard of
12 care"?

13 A It's right there in my report, sir. It's the
14 competent level of care expected of a pharmacist
15 dispensing medication to providing direct patient
16 care.

17 Q And would you agree with me that the standard of
18 care, whatever it is, has to be something that
19 other pharmacies and pharmacists are doing?

20 MR. ELSNER: Objection.

21 BY MR. SWANSON:

22 Q In other words, in order to be a standard, it has
23 to be accepted and adopted by others, right?

24 MR. ELSNER: Objection.

25 A No. It just has to be recognized as a standard by

1 some sort of authoritative body. It doesn't
2 necessarily become a standard because more people
3 are doing it or less people are doing it.

4 BY MR. SWANSON:

5 Q So if it's recognized as a standard by some sort of
6 authoritative body, in your view, that would
7 represent a standard of care?

8 A Yes, sir.

9 Q And what's the authoritative body that you cite or
10 rely on for the practice of pharmacy standard of
11 care?

12 MR. ELSNER: Objection.

13 A A number of different authorities. Number one,
14 it's the boards of pharmacy. Number two, it's the
15 professional associations that have accreditations
16 processes or develop standards like the USP, United
17 States Pharmacopeia standard or other
18 standard-setting groups that actually designate
19 what might be a standard of care.

20 BY MR. SWANSON:

21 Q And I think you told Mr. Bush that the standard of
22 care is that embodied by or encompassed by the
23 Controlled Substances Act?

24 A No. I said it was complementary to, and he asked
25 me whether it was as important as the statutory

1 requirement, and I said in some circumstances, yes.

2 Q So I guess, in your view, somebody could violate a
3 pharmacist's standard of care without violating the
4 Controlled Substances Act?

5 MR. ELSNER: Objection.

6 A It's possible, sir, yes.

7 BY MR. SWANSON:

8 Q And in your view, a person could -- a pharmacist
9 could violate the standard of care even though he
10 or she wasn't violating any state law?

11 A Yes, sir.

12 Q You say in the first paragraph under the standard
13 of care, "The path to becoming a pharmacist
14 involves years of specialized training, education,
15 and licensure and ongoing continuing education to
16 remain current with new drugs, devices, therapies,
17 and standards."

18 Do you see that?

19 A Yes, sir.

20 Q And how many years are required -- how many years
21 of schooling are required to become a practicing
22 pharmacist in Ohio?

23 A Currently, I think it's anywhere between six and
24 eight, sir.

25 Q And why do you equivocate?

1 MR. ELSNER: Objection.

2 A I'm not equivocating. The doctor of pharmacy
3 program in Ohio, I think there are eight or ten
4 colleges of pharmacy in Ohio, and their programs
5 vary in length, and the requirements in Ohio says
6 that -- say that you must graduate from an
7 accredited program of pharmacy and then pass the
8 competency exam.

9 So if a pharmacist went to a six-year program,
10 that would meet the requirement. If they went to
11 an eight-year program, that would also satisfy it.

12 Q Got it. So all of the pharmacists that you're --

13 MR. ELSNER: Sorry, please.

14 Carmen, could I just caution you to pause a
15 little bit. My last objection wasn't recorded, and
16 I think we were speaking over each other.

17 THE WITNESS: Sorry, sir.

18 MR. ELSNER: Please continue.

19 BY MR. SWANSON:

20 Q All the pharmacists at the pharmacy defendants in
21 this case, they all went to school for six or
22 eight years, right?

23 MR. ELSNER: Objection.

24 A I don't know that for certain. And if they
25 graduated prior to the doctor of pharmacy being a

1 requirement, which was in 1999, they may have gone
2 to school four or five years, and if some of the
3 defendants still have assistant pharmacists in
4 their system, then they never graduated from the
5 college of pharmacy.

6 BY MR. SWANSON:

7 Q Does a pharmacist operating in Ohio, do they have
8 to receive training or credits regarding the
9 dispensing of controlled substances while they're
10 in pharmacy school?

11 A It's part of the curriculum for all the programs.

12 Q And do they have to receive training or credits
13 regarding the Controlled Substances Act and other
14 laws applicable to controlled substances?

15 A Yes, sir.

16 Q And so you'd agree with me, we might not have the
17 years right down, but you'd agree with me that the
18 pharmacists who worked for the retail chain
19 defendants, they all had years of specialized
20 training before they became pharmacists, right?

21 MR. ELSNER: Objection.

22 A Yes, sir. The same training that qualifies me to
23 look at a prescription and make a decision as to
24 whether that's appropriate therapy or not.

25 Q I'm sorry. I didn't understand your answer. You

1 said the same training that qualifies me to look at
2 a prescription and make a decision as to whether
3 that's appropriate therapy or not?

4 A Yes, sir. Earlier you asked me a question about
5 whether or not I had specialized training or went
6 to medical school. That specialized training that
7 all the defendant pharmacists have are the training
8 that qualifies pharmacists to be able to evaluate
9 prescriptions and conduct drug utilization review
10 in regard to the appropriateness of a medication.

11 Q But you at least agree with me that the pharmacist
12 that's presented with a prescription has less
13 information about the patient's health and health
14 history than does the doctor who wrote that
15 prescription? We can agree there, right?

16 A Yes, sir.

17 Q Okay. Now, all of the pharmacists who practice in
18 the state of Ohio, they get their licensure from
19 the Ohio State Board of Pharmacy, right?

20 A Yes, sir.

21 Q And the -- well, let me withdraw that.

22 As the licensing body for pharmacists in the
23 state of Ohio, is the Ohio Board of Pharmacy
24 responsible for ensuring that pharmacists that it
25 licenses comply with the relevant laws and

1 regulations?

2 A Yes, sir.

3 Q Is the Ohio Board of Pharmacy responsible for
4 disciplining pharmacists who fail to comply with
5 the relevant laws and regulations?

6 A Yes, sir.

7 Q What I'm getting at, in other words, the Ohio Board
8 of Pharmacy, they don't just hand out licenses to
9 pharmacists who pass the exam when they graduate
10 pharmacy school and then pay them no more mind,
11 right? That's not how it works?

12 MR. ELSNER: Objection.

13 A Correct, sir.

14 BY MR. SWANSON:

15 Q What is the Ohio State Board of Pharmacy do to
16 ensure that the pharmacists that it licenses are
17 qualified to maintain their license?

18 A The requirement for continuing education is
19 something that the Ohio Board of Pharmacy monitors,
20 as well as any complaints they may receive about
21 that pharmacist, and as part of their routine
22 inspections or monitoring of pharmacies, if they
23 detect a problem or suspect a problem, the Ohio
24 Board of Pharmacy uses that as another evaluation
25 tool.

1 Q Got it. So I guess I didn't ask the relevant
2 question first. The license that a pharmacist gets
3 in Ohio, that needs to be periodically renewed,
4 right?

5 A Yes, sir.

6 Q Okay. And what you were just describing, I guess,
7 are kind of the steps that the State Board of
8 Pharmacy takes to ensure that renewal of a pharmacy
9 license is proper, right?

10 A I think the question that you asked me is what does
11 the Ohio Board of Pharmacy do to make sure that
12 that pharmacist remains competent and current.

13 So the answer to that is yes, as well as the
14 second question you asked me.

15 Q Understood.

16 So you mentioned that the State Board of
17 Pharmacy, they have investigators who go out and
18 visit pharmacies in their jurisdiction, right?

19 A Yes, sir.

20 Q And they'll conduct inspections of those pharmacies
21 to make sure they are compliant, right?

22 A Yes, sir.

23 Q And they can interview the pharmacist to make sure
24 the pharmacist is complying with the appropriate
25 state and federal laws and regulations, right?

1 A Yes, sir.

2 Q They provide continuing pharmacy education programs
3 so the pharmacists can make sure they are updated
4 and kept up-to-date on important issues, legal and
5 otherwise, right?

6 A Not exactly, sir. The Ohio Board of Pharmacy
7 requires continuing education. They may provide
8 some sort of CE, but the bulk of CE is provided by
9 approved continuing education providers, and they
10 are approved by the American Council on
11 Pharmaceutical Education.

12 Q Right. I guess what I'm saying is the State Board
13 of Pharmacy, they mandate that the pharmacists
14 comply and complete continuing education courses,
15 right?

16 A Correct. But you'd asked me before you if they
17 provide CEs, and that's what I was clarifying.

18 Q Got it. So they don't provide it, but they mandate
19 that you do it?

20 A They may provide some classes, sir.

21 Q And do they -- do they have other educational tools
22 that they can provide to pharmacists to make sure
23 that pharmacists are able to keep up to speed on
24 important laws and issues?

25 MR. ELSNER: Objection.

1 A Yes. A newsletter program that you referenced
2 earlier is one way, as well as any correspondence
3 or contact with a pharmacist through email or
4 mailings to alert them of changes or important
5 things in Ohio.

6 BY MR. SWANSON:

7 Q And I noticed as I was looking at your materials
8 reviewed, I didn't -- well, let me take a step
9 back.

10 Were you aware that in this case, several
11 Ohio -- State of Ohio Board of Pharmacy
12 investigators provided depositions in this case?

13 Did you know that?

14 A I'm sorry. I did not.

15 Q And I guess you did know that one of the things
16 that the State Board of Pharmacy does is they go
17 out and they conduct inspections of pharmacies in
18 their jurisdiction, right?

19 A Yes, sir.

20 Q And when they do those inspections, they complete
21 reports about their findings from those
22 inspections.

23 You knew that, right?

24 A The standard operating procedure for all boards of
25 pharmacy so yes, sir.

1 Q And I didn't see it in your materials reviewed that
2 you'd looked at any inspection reports for any of
3 the retail chain pharmacies in this case.

4 Is that true you didn't look at any of those?

5 A Yes, sir. I'm not sure I would have access to
6 those if they are legally able to provide them to
7 me, but I did not review them.

8 Q Well, it is something that you knew existed from
9 your time at the NABP. Didn't you ask the lawyers
10 what the Ohio State Board of Pharmacy had to say
11 about the retail chain pharmacies?

12 MR. ELSNER: Objection.

13 A Based upon my experience, many of the states
14 prohibit or will not release the inspection
15 reports, and so I did not ask for that. I did not
16 think it was available, sir.

17 BY MR. SWANSON:

18 Q Got it. Okay.

19 Returning to your report -- and bear with me.
20 I have to find what I'm quoting here.

21 On page 7, continuing on to page 8, you say
22 pharmacists -- so we're talking about the standard
23 of care. You say "Pharmacists are not mere sellers
24 of tablets and capsules prescribed by doctors.
25 They are licensed professionals with independent

1 duties and obligations which have evolved over the
2 past century. Those practices and their standard
3 of care are reflected in national and state laws
4 and regulations."

5 I just want to pause there, okay.

6 In your section on the standard of care, you
7 cite to the Controlled Substances Act, three
8 provisions of the Controlled Substances Act and the
9 Ohio Administrative Code.

10 Do you see that?

11 A On the same page, sir? I don't see a footnote.

12 Are you saying --

13 Q Well, yeah, that was my question. I mean, you have
14 450 footnotes in your report, but when it comes to
15 the section on the standard of care, you don't cite
16 a whole lot of documents, statutes, regulations,
17 etcetera, that you're relying on.

18 Would you agree with that?

19 MR. ELSNER: Objection.

20 A There are so many standards available that I could
21 not list them all, and that's why they are not
22 included.

23 BY MR. SWANSON:

24 Q Well, I want to focus not on standards. I want to
25 focus on federal and state laws. If you look at

1 the last paragraph on that page, on page 8, you
2 cite to three separate provisions of the Controlled
3 Substances Act.

4 Do you see that?

5 A Yes, sir.

6 Q And then you cite to a single provision of the Ohio
7 Administrative Code.

8 Do you see that?

9 A Yes, sir.

10 Q So beginning with the Controlled Substances Act,
11 are there any other federal laws or regulations or
12 sections of the CSA that you rely on for your
13 opinions regarding your definition of the standard
14 of care?

15 MR. ELSNER: Objection.

16 A Yes, sir.

17 BY MR. SWANSON:

18 Q Okay. Can you tell me what they are?

19 A I'd have to go through the document because in this
20 first section, I simply provide a broad overview of
21 what those documents or citations were. And then
22 as those specific citations pertain to a topic or
23 issue of my opinion, they are further cited,
24 including DEA actions or what parts of 1306.04 or
25 1306.06 would be relevant to that particular

1 section, sir.

2 Q I understand. But I want to know -- well, let me
3 just ask it more broadly, then.

4 Have you in your report identified every
5 provision of the CSA that you believe is relevant
6 to your opinion in this case?

7 MR. ELSNER: Objection.

8 A No, sir.

9 BY MR. SWANSON:

10 Q You have not?

11 A No, sir.

12 Q Why not?

13 MR. ELSNER: Objection.

14 A Based upon the reports and the narrative and the
15 explanation of how it applied, I didn't feel it was
16 necessary to cite every single paragraph, sentence,
17 or provision. Instead, quoted the necessary ones
18 but assumed that as a total document, the CSA was
19 applicable and that it would be applicable in this
20 situation in the context of the report and what the
21 activities of the defendants in the case -- the
22 assumption was made that the CSA, the entire
23 document, the entire provision was applicable.

24 (Stenographer requested clarification.)

25 Q At the bottom of page 8, you state -- and I'll

1 start reading. Tell me if you don't see where I
2 am. You say: "For a controlled substance
3 prescription to be valid, a pharmacist is obligated
4 to determine whether the prescription was issued
5 for a legitimate medical purpose."

6 Do you see that?

7 A Yes, sir.

8 Q Okay. And then you cite the CSA at 1306.04(a),
9 right.

10 A Yes, sir.

11 Q And that's a corresponding responsibility
12 provision?

13 MR. ELSNER: Objection.

14 A Yes, sir.

15 BY MR. SWANSON:

16 Q Now, earlier in your testimony in response to a
17 question -- I can't recall who posed it -- you
18 testified that a primary requirement -- those were
19 your words -- primary requirement of a pharmacist's
20 corresponding responsibility is documenting red
21 flags or resolution of red flags.

22 Do you recall that testimony?

23 A Yes, sir.

24 Q If I wanted to find where that specific requirement
25 exists in the Controlled Substances Act, where

1 would you point me?

2 A I would point you to two places, sir. One would be
3 the general provision of 1306.04. And then I would
4 point to clarification of that provision that was
5 provided in the Hills Pharmacy case in Superior I
6 and II, in which the ALJ, the administrative law
7 judge or the findings in that case stated very
8 specifically that documentation was the standard of
9 care and something that would be required.

10 Q Okay. So let's start. You said you would point me
11 to 1306.04(a). And I believe if you turn to
12 page 25 of your report, you have -- you've quoted
13 that provision. So why don't you turn to 25.

14 Are you there?

15 A Yes, sir.

16 Q Okay. And you can see in the second paragraph
17 under the section on "Corresponding
18 Responsibility," you've quoted 1306.04?

19 A Yes, sir.

20 Q And can you show me where in that provision it
21 discusses what you call the requirement of
22 documenting resolution of red flags?

23 A Sure. Based upon my experience and knowledge in
24 this area, that first sentence: "The
25 practitioner's responsible for the proper

1 prescribing and dispensing of controlled
2 substances." My interpretation based upon my
3 experience and all of the matters I've been
4 involved with on this issue, the proper dispensing
5 of controlled substances involves documentation as
6 a standard of care and something that's been
7 spelled out or explained more clearly by the DEA in
8 other actions.

9 Q All right. So let's start with the Controlled
10 Substances Act. I take it you can't identify any
11 provision in the Controlled Substances Act that
12 specifically requires a pharmacist to document the
13 resolution of red flags, true?

14 MR. ELSNER: Objection.

15 A No, sir. The provision I just read is basis for me
16 to make that statement and opinion.

17 BY MR. SWANSON:

18 Q Well, you would agree with me that there's nothing
19 on the face of that language that says anything
20 about documenting red flags or resolution of red
21 flags.

22 You would at least agree with that, right?

23 A No, sir. On the face, the proper dispensing says
24 to me as the pharmacist documentation included.

25 Q All right. Well, then let me just ask. Is there

1 anywhere other than -- anywhere other than what
2 you've just stated where the Controlled Substances
3 Act in the Act itself clarifies or elucidates what
4 it means when it says proper prescribing, that it
5 must include documentation of red flags?

6 A The cases that I cited are very clear and very
7 explicit in clarifying that requirement;
8 Hills Pharmacy and Superior I and II.

9 Q And what year were those?

10 A I believe -- I can't recall, but I'd have to look
11 those up, sir.

12 Q Okay. And are they cited in your report? I was
13 just doing a search.

14 A They are -- I think they are one of the documents
15 as well. I would have to check as well.

16 Q Okay. Other than the language about proper
17 prescribing, is there anywhere else in the
18 Controlled Substances Act that you would point me
19 to that you claim makes clear that documentation of
20 the resolution of red flags is a requirement under
21 the CSA? Anywhere else?

22 A Sections I gave you and the citations are very
23 clear, and that's what I base it on. I don't see
24 any need for anywhere else for it to be mentioned.
25 It's very clear and very explicit.

1 Q Well, I guess you'd agree with me there's nothing
2 else that stopped the DEA from saying, you know
3 what, we're having these cases pop up where
4 pharmacists aren't documenting a resolution of red
5 flags. Maybe we should be more clear in the
6 statute about what's required.

7 That's something the DEA could have done,
8 right?

9 MR. ELSNER: Objection.

10 A Outside of my scope, sir.

11 BY MR. SWANSON:

12 Q What about -- can you point me to any Ohio State
13 law that specifically requires a pharmacist to
14 document resolution of red flags?

15 A I don't have the laws here, but I believe if you
16 want me to research that, I would be willing to do
17 so to determine if that's there or not.

18 Q Well, I'm trying to figure out the basis for your
19 opinion. Okay? And what you've opined and you say
20 in your report is that documentation of the
21 resolution of red flags is required by the
22 Controlled Substances Act, right?

23 A Yes, sir.

24 Q Is it also required by Ohio State law?

25 A Yes, sir.

1 Q What provision?

2 A The provision in Ohio law that says pharmacists
3 must be compliant with all federal laws.

4 Q Got it. Okay.

5 So when you say it's -- that's a requirement
6 under state law, you're just sort of -- you're
7 directing me back to the Controlled Substances Act
8 and Section 1306.04; is that fair?

9 MR. ELSNER: Objection.

10 A As one possible avenue, I also would like to
11 research Ohio law to see if it's mentioned as well.

12 BY MR. SWANSON:

13 Q Okay. But you haven't done that research today, so
14 you can't tell me sitting here; is that fair?

15 MR. ELSNER: Objection.

16 A That's fair, sir.

17 BY MR. SWANSON:

18 Q Now, when you were at the NABP -- we've already
19 talked about this a bit -- but the NABP put out the
20 Model State Pharmacy Act and Model Rules for
21 pharmacists, right?

22 A It's been published since 1960, sir, yes.

23 Q And did -- when you were at the NABP, did you ever
24 tell your board in sum or substance there seem to
25 be issues out there about pharmacists not

1 documenting their resolution of red flags for
2 controlled substance prescriptions. Maybe we
3 should clarify the law and put it out to the states
4 to make sure everybody understands that we think
5 that's a requirement?

6 Is that something that ever happened when you
7 were there?

8 MR. ELSNER: Objection.

9 A Those discussions did take place with my board and
10 also with many of the individuals from the
11 defendants that gave depositions because the issue
12 of documentation arose many times in board
13 requirements and board of laws regarding controlled
14 substances, and the position taken by the
15 individuals who I interacted with directly that
16 represented the defendants would often say that
17 documentation is not something that they wanted to
18 do.

19 And the response from me and the NABP was that
20 the documentation was required and was a critical
21 step in the process for dispensing prescriptions.

22 MR. SWANSON: Okay. Can we go off the record?
23 I lost my real-time, and I really needed it for
24 that response.

25 MR. ELSNER: That's fine. Should we take a

1 quick five-minute break?

2 THE VIDEOGRAPHER: We're off the record.

3 (A recess was taken.)

4 BY MR. SWANSON:

5 Q Dr. Catizone -- excuse me -- Mr. Catizone, when I
6 asked you about the requirement that a pharmacist
7 document the resolution of red flags, you pointed
8 me to the Controlled Substances Act in Section
9 1306.04, and then you cited two or three cases that
10 you said you were relying on to support that
11 opinion of yours.

12 I don't see those cases cited anywhere in your
13 report or in the materials relied upon that you
14 provided to the lawyers in this case.

15 Do you know if that's accurate?

16 MR. ELSNER: Objection.

17 A I would assume what you're saying is accurate.
18 Earlier in my testimony, the question was asked
19 about whether or not everything or references and
20 background that I utilized would be included in my
21 report, my response was no, and so to new
22 questions, new areas that were not part of my
23 original report that I'm using in relying on that
24 experience to cite those cases.

25 BY MR. SWANSON:

1 Q Well, with respect, sir, you do comment and opine
2 about what you claim is an obligation to document
3 resolution of red flags. That is contained in your
4 report, isn't it, sir?

5 A Yes, sir.

6 Q Okay. But in the cases that you're now testifying
7 about, they are not cited in your report, true?

8 MR. ELSNER: Objection.

9 A They are not cited based upon the materials in my
10 report but based upon your questions, which asked
11 for whether or not they were specifically required
12 rather than whether or not it was something that
13 the pharmacist should and was required to do in the
14 specific citations, and that's why the additional
15 information was provided.

16 BY MR. SWANSON:

17 Q And could you tell me real slow so we can all write
18 it down what these cases are that you're relying on?

19 A Sure. Hills Pharmacy in which the opinion
20 indicated that the absence --

21 Q I don't need the opinion. I just want to know what
22 the cite is.

23 A And the other one is Superior I and II.

24 Q Okay. And then -- and those were both -- forget
25 it. I'll find those.

1 My last question for today, it appeared to me
2 throughout the deposition that there have been
3 times you're reading from documents, and I just
4 want to be sure, have you read from any documents
5 other than, you know, the exhibits that have been
6 presented to you or your expert reports? Any other
7 documents you have in front of you?

8 A No, sir. The only documents I'm reading are what
9 you see is me trying to organize all of the
10 different exhibits, but I have no other documents
11 except my supplemental report and the exhibits,
12 sir.

13 Q Okay. And I wasn't accusing. I just wanted to be
14 sure that I saw everything that you saw. Okay.

15 MR. SWANSON: With that, we'll convene again
16 tomorrow morning to finish up. Thanks very much.

17 THE VIDEOGRAPHER: We're off the record.

18 (Time noted: 5:12 p.m.)

19

20

21 FURTHER THE DEPONENT SAITH NOT

22

23

24

25

CARMEN A. CATIZONE, MS, RPh, DPh

1 STATE OF INDIANA)
) SS:
2 COUNTY OF HAMILTON)

3
4 I, Amy Doman, Stenographic Reporter,
5 Registered Merit Reporter, Certified Realtime
6 Reporter, Certified Shorthand Reporter, Notary
7 Public in and for the County of Hamilton, State of
8 Indiana, at Large, do hereby certify that CARMEN A.
9 CATIZONE, MS, RPh, DPh, the deponent herein, was by
10 me first remotely duly sworn to tell the truth, the
11 whole truth, and nothing but the truth in the
12 aforementioned matter;

13 That the foregoing deposition was taken on
14 behalf of the Defendants, at the Mount Pleasant,
15 South Carolina, on Tuesday, June 15, 2021, pursuant
16 to the Federal Rules of Civil Procedure;

17 That said deposition was taken down in
18 stenographic notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and that
22 signature was requested by the deponent and all
23 parties present;

24 That the parties were represented by their
25 counsel as aforementioned.

1 I do further certify that I am a disinterested
2 person in this cause of action, that I am not a
3 relative or attorney of either party or otherwise
4 interested in the event of this action, and that I
5 am not in the employ of the attorneys for any
6 party.

7 IN WITNESS WHEREOF, I have hereunto set my
8 hand and affixed my notarial seal this 18th day
9 of June, 2021.

10
11
12 
13

14 Amy Doman, RMR, CRR, CSR
15 Stenographic Reporter
16 Notary Public
17
18

19 My Commission Expires:
20 September 30, 2025,
21 Residing in Hamilton County, Indiana
22
23
24
25

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 18, 2021

To: Michael E. Elsner

Case Name: National Prescription Opiate Litigation - Track 3 v.

Veritext Reference Number: 4628755

Carmen A. Catizone, MS, RPh, DPh Deposition Date: 6/15/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4628755
CASE NAME: National Prescription Opiate Litigation - Track 3
DATE OF DEPOSITION: 6/15/2021
WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date Carmen A. Catizone, MS, RPh, DPh

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4628755

CASE NAME: National Prescription Opiate Litigation - Track 3

DATE OF DEPOSITION: 6/15/2021

WITNESS' NAME: Carmen A. Catizone, MS, RPh, DPh

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date Carmen A. Catizone, MS, RPh, DPh

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

ASSIGNMENT NO: 4628755

PAGE/LINE (S)	CHANGE	/REASON
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Date Carmen A. Catizone, MS, RPh, DPh

SUBSCRIBED AND SWORN TO BEFORE ME THIS

DAY OF _____, 20____.

Notary Public

Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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